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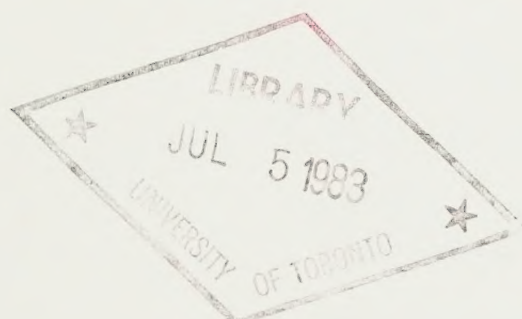
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TENTH REPORT OF THE SELECT COMMITTEE ON THE OMBUDSMAN

1983



Third Session, Thirty-Second Parliament
32 Elizabeth II



Ontario

LEGISLATIVE ASSEMBLY
ASSEMBLÉE LÉGISLATIVE

April 1983

THE HONOURABLE JOHN M. TURNER
Speaker of the Legislative Assembly
of the Province of Ontario

Sir,

We, the undersigned members of the Committee appointed by the Legislative Assembly of the Province of Ontario on Thursday, July 2, 1981, have the honour to submit the attached tenth report.

ROBERT W. RUNCIMAN, M.P.P.
Chairman

ROBERT MACQUARRIE, Q.C., M.P.P.

ROBERT MITCHELL, M.P.P.

RENE PICHE, M.P.P.

YURI SHYMKO, M.P.P.

DON BOUDRIA, M.P.P.

RON VAN HORNE, M.P.P.

TONY LUPUSELLA, M.P.P.

MICKY HENNESSY, M.P.P.

DAVID COOKE, M.P.P.

WILLIAM HODGSON, M.P.P.

JOHN EAKINS, M.P.P.

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ON THE
OMBUDSMAN

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| ROBERT MACQUARRIE, Q.C., M.P.P. | Carleton East |
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| YURI SHYMKO, M.P.P. | High Park Swansea |
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| RON VAN HORNE, M.P.P. | London North |
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TENTH REPORT OF THE SELECT COMMITTEE ON THE OMBUDSMAN

Part I Introduction

The Committee met for three weeks in September, 1982 to consider the Ninth Report of the Ombudsman and deal with other matters relevant to its terms of reference. The Committee wishes to extend its appreciation to the representatives of all of the governmental organizations who appeared before it, for their co-operation and assistance. The Committee continues to be impressed generally by the level of presentations made on behalf of these organizations. The Committee's work has been made easier by the efforts of those involved.

The Committee also wishes to extend its appreciation to the Ombudsman and his staff for their very able advice and assistance. It was particularly assisted by the increased role played by the Ombudsman during these proceedings. His opinions and comments expressed in the areas of the organization and operation of his office were valuable.

The remainder of this Part is intended to set forth the Committee's opinions on two distinct matters. These opinions should not be construed as inconsistent. The fact that the Committee considers the Ombudsman's operation to be of high quality does not prevent it from being critical of matters which do not best serve the people of Ontario or which may jeopardize his relationship with the Assembly.

The Committee has found again that the Ombudsman's investigations are thorough; his reports are well documented, well written and comprehensive; and his decisions as expressed in "Section 22 Reports" are objective and based upon material facts disclosed by the investigations. In other words, it is still of the opinion that the office is a "first class" operation. However, the Committee remains of the opinion that further steps can and must be taken to decrease the time in which jurisdictional complaints are processed by the office to appropriate conclusions. The Committee commends the Ombudsman for the significant steps which have been taken by him and his staff in the past two years to decrease the backlog of cases, the average duration of jurisdictional files and other matters and to otherwise make more efficient the operation of the office. Nevertheless, because the office does

rank among the very best in the world it is appropriate to expect that further improvement in performance will occur.

It is the experience of the Committee members and many of their colleagues in the Legislature that one's effectiveness in dealing with a problem or concern of a constituent, or complainant as the case may be, diminishes as the time taken with that problem increases. There is no formula which can be applied to determine when maximum effectiveness is obtained or lost. It of course depends on the circumstances of each case. However, where it takes in excess of one year to close over thirty percent (approximately 650) of the jurisdictional files, the overall effectiveness of the office has been diminished. The Committee will continue to pursue this matter with the Ombudsman and his staff until satisfied that all steps have been taken to maximize the effectiveness of the office.

The Committee is equally concerned that its effectiveness has been jeopardized by the delay between the tabling of its Ninth Report (December 1981) and its ultimate adoption (November 18, 1982). The only means whereby the Ombudsman can obtain the result recommended by him for a particular complainant is to have that recommendation approved by this Committee and ultimately adopted by the Legislature. If steps are not taken to significantly reduce the time within which the Legislature considers for adoption the recommendations for this Committee, then the Ombudsman and through him the complainants, will be faced with a delay of approximately two years between the time the Ombudsman initially makes his recommendation to the governmental organization concerned until the Legislature finally makes a decision whether in effect to adopt that recommendation.

In the Committee's opinion the Ombudsman process is not being served by such a delay. Accordingly, the Committee has recommended elsewhere in this Report that its Reports which contain recommendations for the adoption of recommendations of the Ombudsman be debated by the Legislature within eight sessional weeks of the date of the tabling of its reports.

During the Committee's proceedings in September an issue arose between it and the Ombudsman concerning its entitlement to certain documentation and information requested from the Ombudsman. On February 9, 1982, the Committee by motion requested that the Ombudsman provide it with a copy of his office's budgetary submission which was made to the Board of Internal Economy on December 14, 1981 with the names of specific employees deleted. This request was communicated to the Ombudsman in writing shortly after February 9th.

No formal response was received to the Committee's request until September 15, 1982 when the Ombudsman by letter to the Chairman of the Committee advised that he would not provide the Committee with the budgetary submissions and would not participate in any discussions by the Committee of those submissions.

The Ombudsman's letter, (Schedule 1) sets forth four reasons for his position:

- (a) it was beyond the Committee's terms of reference to request such matters;
- (b) it would not assist the Committee in carrying out its terms of reference;
- (c) to provide the materials would be to flout the wishes of the Assembly which had to date declined to adopt previous Committee recommendations that its terms of reference be expanded to receive and consider the annual and supplementary estimates of the Ombudsman and;
- (d) to provide the requested materials without an amendment to the Committee's order of reference would be to compromise the independence of the Ombudsman in his day to day operation of the office from interference by the political arm of the Legislature.

The Ombudsman stated that unless the Committee's order of reference were amended to include the authority to consider his estimates or an appropriate amendment made to the Ombudsman Act, he would not comply with the Committee's request.

The Committee attempted to resolve the apparent impasse without formal confrontation or actions which might significantly harm the relationship between the Committee and the Ombudsman. These efforts did not produce any satisfactory result. In any event the issue was resolved when on November 18, 1982 the Legislature adopted the Ninth Report of the Select Committee and in particular recommendation number 7:

"that its order of reference be amended to provide that it receive and consider all estimates and supplementary estimates of the Ombudsman and to report thereon to the Legislature with whatever recommendations are considered appropriate".

Shortly thereafter the Ombudsman tabled with the Chairman a copy of the requested materials. Because the Committee believes that the positions set forth in the Ombudsman's letter and his refusal to honour the Committee's request have serious implications on the role and relationship of his office to the Assembly, it feels that the following comments are appropriate.

The Committee neither agrees with nor accepts any of the reasons set forth by the Ombudsman in refusing to honour the Committee's request. In the Committee's opinion its request was well within its authority and should have immediately been honoured by the Ombudsman.

This is not the first occasion in which the Committee has disagreed with the Ombudsman over its authority to request information and to consider certain matters. In 1977 the former Ombudsman took the position that the Committee had no authority to deal with concerns addressed to it by Patrick Reid, M.P.P. respecting the appearance on a local television station by a member of Ombudsman's staff with a candidate nominated by another party who eventually ran against Mr.

Reid. The Ombudsman on that occasion walked out of the Committee's proceedings, although requested by it to remain. The Committee believes that the comments it made in its Second Report respecting the Ombudsman's conduct at that time are applicable on this occasion.

"This was an ill-advised act displaying an unfortunate attitude and a misunderstanding of the role of this Committee and its obligation to report to the Assembly.

In the opinion of the Committee there must be an ongoing relationship based on mutual respect and understanding between the Ombudsman and the Committee. In order to achieve this respect and understanding, the Committee chooses not to comment at length upon this incident or to make any recommendation about it. The Committee hopes it will not occur again.

The Committee believes that the public is best served by the ongoing dialogue between the Ombudsman and the Assembly through this Committee, as envisaged by the Legislature when the Act was passed; by the Select Committee under the chairmanship of Vernon Singer, Q.C., M.P.P.; and by the Legislature when it appointed the Select Committee. The essence of the relationship between the Assembly and the Ombudsman does not lie in any legislative definition of jurisdiction, but in good faith, mutual respect, and co-operation, with open and free discussion between this Committee and the Ombudsman. The Committee urges this view on the Ombudsman." (Emphasis added)

On November 4, 1982 when the Committee's Ninth Report was debated in the House the Chairman stated as follows:

"...I wish to put on the record some comments about the Ombudsman and his office. While there have been and doubtless will always be disagreements of this nature, I have no hesitation in saying that for my part I have the greatest respect for the integrity and dedication of our present Ombudsman, the Honourable Donald Morand, and for the calibre of his staff.

To paraphrase the comments on page 8 of the Report, while the Committee will continue to comment critically on the Ombudsman's procedures and approaches, particularly those relating to the length of time taken by the Ombudsman to deal with complaints, it will do so in the recognition that the

operation is already first class and in the belief that the Ontario Ombudsman's office can and should be the best anywhere."

The Committee endorses the Chairman's comments.

Having reached the mandatory retirement age, the present Ombudsman, the Honourable Donald R. Morand, will be retiring later this year. The Committee congratulates and commends him for the contribution he has made to the people of the Province of Ontario and in particular to the institution of the Ombudsman in this Province. He assumed the position at a time which may well have been the most critical in its development. During his tenure the quality of the investigations of the office increased substantially; the Reports issued from his office were well written and comprehensive; the extraordinary backlog of cases which existed four years ago was substantially diminished and the office developed a relative stability which was important for any effective performance. His manner and style won the respect of virtually all the governmental organizations with whom he dealt. The working relationships with some organizations, most notably the Workers' Compensation Board, has never been better.

His successor will inherit a high quality operation with the potential to meet almost immediately, the demands of the office and the needs of the people of the Province of Ontario throughout the 1980's. The people of Ontario require the Ombudsman to be seen to perform his functions and perform them well. The new Ombudsman should be a person with the ability to further develop the office as an effective instrument of the people to redress quickly and forcefully the consequence of maladministration by governmental organizations. The Committee hopes that these comments will provide guidance in the appointment of Mr. Morand's successor.

Part II - Comments and Response from the Ombudsman

(a) Response from the Ombudsman to the Committee's Ninth Report

Many of these responses are dealt with under specific subject matter elsewhere in this report e.g. statistical analysis, North Pickering. However, the two matters which caused the Committee most concern were the Ombudsman's comments vis-a-vis the limits of its authority to formulate general rules for the guidance of the Ombudsman in the exercise of his functions under the Ombudsman Act and the Ombudsman's response to the comments of the Committee on page 22 of its Ninth Report as to the trend of the increase in duration of "closed files" and the office's ability to cope with the existing work load.

As a response to the Committee's comments in the Ninth Report the Ombudsman forwarded a letter sent to the Chairman dated March 10, 1982 (see Schedule 2). The Committee was concerned as to the Ombudsman's reliance on this letter as a response since it appeared to be critical of certain conclusions and comments drawn by individual members and the press respecting the organization and operation of his office. However, the Ombudsman subsequently clarified his position. He was able to refer to only one place in the Committee's Ninth Report where he disagreed with its conclusions. That matter (role of administrative changes on increased durations to close files), was fully discussed with the Ombudsman and it was agreed that no further misunderstanding remains as to the Ombudsman's statistics and the Ombudsman's interpretation of the Committee's Report.

The Committee has no doubt that the question of the extent of its jurisdiction vis-a-vis general rules will continue to be discussed with this and succeeding Ombudsmen. Needless to say, the Committee does not share the Ombudsman's view that the authority is confined "to a specific category", and comments on this matter in Part VI of this report.

Since the Committee's Report was only formally adopted by the Legislature in December the Committee will shortly be giving the Ombudsman

further opportunity to make any other comment and response which he considers appropriate.

The Committee has already commented in Part I on the delay in the adoption of its Ninth Report.

FOR THE REASONS AS SET ON PAGES 1 AND 2 OF THIS REPORT THE COMMITTEE RECOMMENDS THAT ALL REPORTS TABLED BY IT IN THE LEGISLATURE WHICH CONTAIN RECOMMENDATIONS FOR THE ADOPTION OF OMBUDSMAN RECOMMENDATIONS BE DEBATED WITHIN EIGHT SESSIONAL WEEKS.¹

(b) Responses from Governmental Organizations
to recommendations contained in the Report

(1) Ministry of Health

Recommendation No. 2 - Complaint No. 40, Third Report of the Ombudsman

See Part III, Subsection (e), Subsection (iv).

(2) Ministry of Labour - Workers' Compensations Board

Recommendations No. 5 and 6

The Committee in its Ninth Report stated as follows:

"While the Committee, earlier in this report, has indicated that it acknowledges the Legislature's right to reject any recommendation made by it supporting a recommendation of the Ombudsman, it is nevertheless concerned that there remains a very unsatisfactory situation as far as Section 42(1) (now 43(1)) of the Workmen's Compensation Board Act is concerned. It is clear that the section is capable of more than one legal interpretation. The Minister of Labour, the Workmen's Compensation Board and indeed the Legislature, prefer an interpretation which provides that the level of permanent disability award shall be determined solely from the clinical assessment made of the injury in question. The Ombudsman, himself a former Justice of the Supreme Court of Ontario, and his Select Committee have and continue to interpret the Section differently as permitting a consideration of all relevant factors in determining the quantum of the permanent disability award.

It is not unusual to have a difference in legal opinions respecting legislation providing for the payment of money benefits to persons in accordance with certain formulae. It is also not unusual to have a difference of legal interpretations of certain statutory provisions which have, for all practical purposes, been applied by the body administering the Act in a manner different from the strict legal interpretation.

In the Committee's opinion, while the Legislature may have been justified in rejecting the Committee's recommendation on the grounds of the two independent legal opinions obtained by the Board and the Minister of Labour, it has a further duty to assist in the resolution of the consequences of that decision. There is a procedure readily

available under the Constitutional Questions Act, R.S.O. 1980, Volume 1, Chapter 86, to obtain a final determination of which of the two interpretations is correct. Under that Act,

"The Lieutenant Governor in Council may refer to the Court of Appeal or to a Judge of the Supreme Court for hearing and consideration any matter that he thinks fit, and the Court or Judge shall thereupon hear and consider the matter so referred." (Section 1).

On such a reference the Court could consider all of the legal opinions expressed to date, the conduct of the Workmen's Compensation Board as it has historically interpreted and implemented the section, and any other circumstances which may be relevant and necessary to interpret the section.

THE COMMITTEE THEREFORE RECOMMENDS THAT THE LIEUTENANT GOVERNOR IN COUNCIL REFER TO A JUDGE OF THE SUPREME COURT OF ONTARIO FOR HEARING AND CONSIDERATION THE INTERPRETATION OF SECTION 42(1) OF THE WORKMEN'S COMPENSATION BOARD ACT (NOW SECTION 43(1)).⁵

The Committee was referred to the provision in the White Paper released by the Ministry of Labour in response to Professor Weiler's report "Reshaping Workers' Compensation for Ontario" that under new Workmen's Compensation Board legislation,

"Those workers who were injured previously but who elect to transfer to the new Act will have their benefits recalculated on the basis of actual wage loss." (emphasis added)

The Committee understands that such legislation will permit the 135 complainants represented by complaint No. 25 to apply to the Workmen's Compensation Board for a recalculation of their benefits more in accordance with the interpretation of Section 43(1) preferred by the Ombudsman and this Committee.

However, the White Paper is apparently silent on the issue of whether the recalculation and entitlement of benefits on the basis of actual wage loss will be retroactive to the date of the commencement of the permanent disability. THE COMMITTEE THEREFORE RECOMMENDS THAT THE MINISTRY OF LABOUR CONSIDER INCLUDING

A PROVISION IN THE NEW WORKMEN'S COMPENSATION LEGISLATION TO PROVIDE FOR RETROACTIVE PAYMENT OF BENEFITS TO WORKERS SUCH AS THE 135 REPRESENTED BY THE OMBUDSMAN'S COMPLAINT NO. 25, ON THE BASIS OF ACTUAL WAGE LOSS.⁶"

In response to recommendation No. 5 the Deputy Attorney General advised the Ministry of Labour that since he concurred in the legal opinions that were obtained by the Board and the Ministry he did not see any need to refer the matter to the Court for consideration. He further stated that:

"In my respectful view, the matter is not a legal problem but a political one which Cabinet must deal with either by supporting the legal opinion and the current practice of the Board and thereby refusing a reference under the Constitutional Questions Act, or, by considering a possible amendment to the Workmen's Compensation Act to broaden the criteria for the determination of the quantum of permanent disability awards."

The Deputy Minister of Labour concurs with the view expressed by the Deputy Attorney General. The Government does not intend to implement Recommendation No. 5. The Committee is disappointed that the Court will not be utilized to resolve the differing legal opinions which exist respecting this section of the Workmen's Compensation Act. The legal uncertainty created by the differing legal opinions will continue.

The substance of the amendment contemplated by the Committee's Recommendation No. 6 was considered by the Legislature's Standing Committee on Resources Development last year when it dealt with Professor Paul Weiler's Report "Reshaping Workers Compensation for Ontario". The Ministry of Labour and the Workmen's Compensation Board are both reluctant to respond to this recommendation in any detail until the report of the Resources Development Committee has been tabled and debated in the Legislature. Accordingly, the Committee defers any further comment until a later date.

Part III - Ninth Report of the Ombudsman, April 1, 1981 to March 31, 1982

(a) Statistical Analysis

Before any meaningful statistical analysis can be carried out of the matters handled by the Ombudsman's Office, a general explanation is required of the manner of which the work of the office is "processed" and recorded. Generally, the work is processed in two ways: (1) a file is opened because of the jurisdictional nature of the complaint or because of the time and effort involved to determine the jurisdictional issue and/or to obtain a resolution and; (2) no file is opened on information requests or complaints which are handled or resolved with minimal time and effort and on which documentation is minimal. The office describes these as "fast action" matters.

The statistics reported by the Ombudsman during the fiscal period in question are essentially broken down by the two categories above. When one compares statistics for previous fiscal periods it is important to ensure that the comparisons relate to identical categories. That is either (a) a comparison of files to files; (b) a comparison of fast action matters to fast action matters; or (c) a comparison of the combined totals of the two categories. It is with this in mind that the Committee makes the following comments and observations after analyzing and comparing these statistics for the fiscal period ending March 31, 1982 with the fiscal period ending March 31, 1981.

Matters Received by the Ombudsman's Office
during the Fiscal Period ending March 31, 1982

(a) The combined total of complaints, both "fast action" and file openings, increased by 10 percent (8,709 to 9,567);

(b) The number of complaint files which were opened decreased by over 10 percent (4,022 to 3,217);

(c) The number of "in progress" files open as at the end of the fiscal period decreased by over 10 percent. In fact the total (1,457) is reported as the lowest since the office began full operation in January, 1976.

The "in progress" statistic is perhaps the most significant in terms of the Committee's continuing concern as to the time taken to resolve complaints. There is no doubt that the Ombudsman has accomplished his goal of having more people working on fewer files than has ever been the case in the history of the office. If that is so then the Committee is entitled to expect that the statistics for the next reporting period (presuming the number of complaints received and the staff complement remain proportionally the same) will demonstrate that the number of in progress files and the average duration of those files in the office have decreased.

Matters Closed by the Ombudsman during
the Fiscal Period ending March 31, 1982

(a) The combined total of all matters closed decreased by just over 5 percent;

(b) The number of cases wherein the Ombudsman made recommendations to governmental organizations decreased by over 80 percent (168 to 28). This reduction may be attributed to the extraordinary number of matters which were closed during the previous fiscal period. However the Committee intends to pursue this matter to determine whether any significant trend is developing;

(c) The number of matters resolved by the office's involvement decreased by almost 40 percent. This again may be explained by the extraordinary performance in the previous fiscal period. This Committee intends to pursue this matter further;

(d) The ratio of complaints resolved in favour of a complainant to those resolved in favour of a governmental organization has remained approximately the same. It is due at least in part to a consistency of approach in the exercise of the Ombudsman's discretion.

Duration of Matters Handled by the Office

(a) In Progress Files (files not yet closed as at March 31, 1982 - 1,457)

Of the total in this category, 31.4 per cent were open for more than a year; 15.0 per cent were open for at least two years and 7.4 per cent were open for more than 33 months.

(b) All Matters Closed (files and fast action 10,175)

As of March 31, 1982, 7.7 per cent of the matters closed were outstanding for longer than one year; 2.6 per cent were outstanding for longer than two years and 1.1 per cent were outstanding for more than 33 months. The average duration of all matters was 79 days.

(c) Jurisdiction Complaints Closed by March 31, 1982 (cases where files were opened - 3,376)

Of this category 31.1 per cent were open for a period longer than one year, 10.3 per cent were open for a period longer than two years and 4.4 per cent were open for a period longer than 33 months. The average duration of these files was 202 days.

The Committee has already expressed its concern as to the duration of matters handled by the office particularly in the category of jurisdictional complaints. On the one hand the Ombudsman should be complimented for closing in excess of 92 per cent of matters received by his office within the space of one year or 79 days on average. On the other hand, the jurisdictional matters, which require the exercise of Ombudsman functions in the most complete sense, on average require substantially more time to complete.

For example, the 28 matters wherein a recommendation pursuant to Section 22 of the Ombudsman Act was made to a governmental organization took an average of 664 days to complete. The Committee does not intend to make any further comment or recommendations at this time. It will however continue to pursue with the Ombudsman and his staff reasons for the various times taken to complete the various categories of matters.

The Committee notes with interest that the Ombudsman now has in place a tracking mechanism to pinpoint "problem files" to assist him in keeping these to a minimum. It further understands that the Ombudsman forecasts an extremely small number of files which would fall into the category of inordinate duration, that the backlog is virtually eliminated and that the statistics which cause the most concern will not again occur.

The Committee is anxious to review the statistics for the latest fiscal period against these recent administrative changes.

(b) Workers' Compensation Board

(i) Definition of "Accident"

The Ombudsman reported a disagreement with the Workers' Compensation Board respecting the definition of "accident" as found in Section 1(1)(a)(III) of the Workers' Compensation Act.

Although the Ombudsman intended to ask the Committee to accept his interpretation over the Board's and to make an appropriate recommendation to the Legislature, this was avoided by the following agreement reached between the Ombudsman and the Board:

"In determining whether personal injury by accident arising out of and in the course of employment is caused to an employee under Section 1(1)(a)(III), the Board:

- (a) will not deny a claim solely because, either
 - (i) the claimant or the Board is unable to identify a specific accident, incident or event which the claimant alleges caused the disablement, or
 - (ii) the work that the claimant was engaged in was repetitive or performed for an extended period of time.
- (b) the Board will have regard for the medical opinion in the Board file including medical opinions that the Board sees fit to obtain."

The Committee commends both the Ombudsman for the approach he has taken and the Workers' Compensation Board for its readiness and willingness to agree to a formula designed to overcome an apparent impasse.

Whenever the Ombudsman is of the opinion that the determination in his favour (by this Committee and the Legislature) of some matter of general administrative policy and practice will avoid a significant number of complaints made to his office, then he should refer and report those matters to the Committee. On those occasions the governmental organization with which the disagreement exists should be prepared to come to the Committee to explain why its policy or practice is to be preferred over that of the Ombudsman.

(ii) 135 Cases

In Recommendation 3 of its Ninth Report the Committee recommended to the Ombudsman that he conduct further investigations as required by the provisions of the Ombudsman Act and then formulate such opinions, recommendations and reports as he considers appropriate in the circumstances. In each of the 135 cases the Ombudsman was required to make a finding either in favour of the complainant or the Workers' Compensation Board.

The Ombudsman has not completed his investigation of all 135 cases. As of the writing of this report 133 cases were closed without finding in favour of the complainant. Of the 2 remaining the possibility exists that some will result in recommendations made to the Workers' Compensation Board.

The Committee urges the Ombudsman to complete the investigation of all of these matters as quickly as possible. ACCORDINGLY IT RECOMMENDS THAT THE REMAINING NINE CASES BE COMPLETED AS QUICKLY AS POSSIBLE AND THAT THE OMBUDSMAN REPORT TO THE LEGISLATURE ON THE DISPOSITION OF EACH.²

The Committee intends that if some of the 9 cases are categorized as "recommendation denied" it will take such steps as are appropriate to conduct hearings during its next sittings.

(c) North Pickering

The Ombudsman advised the Committee that since September, 1981, the "Hoilet Report" has been finalized and all persons who may have been adversely affected by that report have been given an opportunity and in fact have made responses to it. It seems that the Ombudsman's discussions with the Ministry of Housing has reached a critical stage insofar as the satisfactory resolution of outstanding matters is concerned.

The Committee does not wish to do anything which might have a negative effect on the Ombudsman's efforts in this regard. At the same, it continues to be concerned over the inordinate period that has elapsed since the North Pickering matter first came to the attention of the Legislature. The Committee hopes the Ombudsman will be mindful of these comments in his forthcoming efforts.

THE COMMITTEE RECOMMENDS THAT IN THE EVENT THAT THE OMBUDSMAN IS ABLE TO REACH A SATISFACTORY RESOLUTION OF ALL OUTSTANDING NORTH PICKERING MATTERS, OR IF HE CONCLUDES THAT THE RESPONSES OF THE MINISTER TO ANY OF HIS RECOMMENDATIONS ARE NEITHER ADEQUATE OR APPROPRIATE, THEN HE SHOULD REPORT TO THE LEGISLATURE ON THE THE NORTH PICKERING MATTERS BEFORE THE END OF JUNE, 1983.³

(d). Amendments to the Ombudsman Act

Recommendation 8 of the Committee's Ninth Report urged that any legislation tabled amending or otherwise dealing with the Ombudsman Act be referred to the Committee for consideration after second reading. To date no such bill has been tabled in the Legislature.

However the Ombudsman, with the concurrence of the Attorney General, did table with the Committee a copy of a draft Bill and policy submission given to Cabinet in January, 1981. (see Schedule 3).

The Committee has not been given any indication from the Ministry of the Attorney General as to when, if ever, a Bill amending the Ombudsman Act will be tabled. The Act requires obvious amendment in many areas both by way of "house keeping" and substantive changes. To withhold legislation amending the Act which would improve the ability of the Ombudsman to perform his functions deprives the people of the Province of Ontario of a more effective Ombudsman.

ACCORDINGLY, THE COMMITTEE RECOMMENDS THAT THE ATTORNEY GENERAL TABLE, DURING THE 32ND PARLIAMENT OF THIS LEGISLATURE A BILL AMENDING OR OTHERWISE DEALING WITH THE OMBUDSMAN ACT HAVING REGARD FOR THE MATTERS CONTAINED IN THE DRAFT BILL AND POLICY SUBMISSION PROVIDED BY THE OMBUDSMAN IN JANUARY, 1981.⁴

- (e) Recommendations in Previous Ombudsman Reports and/or Committee Reports in respect of which it is expected that some further action will be taken by the Governmental Organization affected

Ministry of Education

The Ministry of Education has not yet implemented Recommendation No. 23 of the Committee's Third Report

"that the Ministry forthwith pursue its discussions with the insurance industry and other interested parties for the purpose of developing an appropriate contract of insurance in the indemnity type at a realistic premium which would adequately compensate a pupil for injuries sustained in the case of a peer accident as a result of participation in shop classes and in organized athletic activities."

The Ministry has reported that the Committee's recommendation has been implemented in part by virtue of a recent amendment to the Education Act (Bill 46). Section 8(1)(i) now permits the Minister to

"prescribe the conditions under which and the terms upon which pupils of Boards shall be deemed to be employees for the purposes of coverage under the Workers' Compensation Act, deem pupils to be employees for such purpose and require a board to reimburse Ontario for payments made by Ontario under that Act in respect of a pupil of the board deemed to be an employee of Ontario by the Minister."

Thus pupils who participate in "work experience" programs in the industrial and commercial communities will be covered by the Workers' Compensation Act in the event an accident arises out of or occurs during the course of "employment".

Insofar as the remaining pupils who are covered by the Committee's recommendation are concerned, the Ministry has yet to act. There has been some consideration of the viability of implementing a province wide mandatory form of student's insurance providing comprehensive coverage for all students in all school related situations including school sponsored or related transportation and co-operative work place situations. The preliminary estimate of the cost of such an insurance plan is four million dollars. The Ministry is unable to indicate what the probable outcome of its deliberations will be or whether in fact such an insurance scheme will ever be implemented. The Ministry was frank to concede that the major obstacle was cost. There is little doubt that such coverage is possible providing the funding was available.

The Committee remains of the opinion that its recommendation can and should be implemented. The Ministry is to be commended for providing by the recent amendment to Section 8 of the Education Act that pupils on work experience programs will have some form of "coverage". However, further steps must be taken to ensure that pupils participating in programs at school in the kind mentioned in the recommendation which carry a similar risk of injury to those working in the "experience" programs have available insurance coverage in the event of a "pure accident".

In the Committee's opinion this can be accomplished in one of two ways:
(a) by the Minister deeming, for the purposes of Section 8(1)(i) of the Education Act, all pupils who participate in shop classes and organized athletic activities as

employees of Ontario or (b) by the implementation of a policy of insurance on a province wide basis funded ultimately by the people of the Province of Ontario. The Committee will pursue these suggestions with the Ministry during its next sittings.

Ministry of Government Services

There are two recommendations of the Select Committee which have yet to be implemented by this Ministry. The first is Recommendation No. 34 in the Committee's Third Report:

"that the Audit Act and the Financial Administration Act be amended to provide that when such a recommendation is made by the Ombudsman after all necessary and appropriate requirements of the Ombudsman Act have been adhered to by his office, and when entirely accepted by the governmental organization, "a lawful authority" is created for such money to be paid by the governmental organization out of the consolidated revenue fund. Further that the Ombudsman's office and the Ministry of Government Services resume their discussions on the merits of the Ombudsman's recommendation that the results of these discussions are to be reported to the Select Committee."

The Ministry of Government Services is willing to comply with a recommendation made by the Ombudsman that certain monies be paid to this complainant. However, the Ministry feels that unless the Financial Administration Act is amended the Ministry cannot implement the Ombudsman's recommendation.

The Committee has had preliminary discussions with representatives of the Treasurer on an appropriate amendment to the Financial Administration Act. Initial indications are that the Ministry is not opposed in principal to such an amendment. However, the Ministry requires a further period to consider the full implications before making a formal response to the Committee's recommendation. The Committee intends to pursue this matter further with representatives of the Treasurer and will report further on all developments.

Recommendation No. 24 of the Committee's Third Report proposed that the Ministry table appropriate legislation removing the present restriction on the

total current earning of a Provincial superannuitant. The Management Board of Cabinet has approved in principal an amendment to the Public Service Superannuation Act which would remove the present provisions requiring reduction or suspension of pension benefits where a pensioner is re-employed by the Crown. The proposed amendment would apply to persons who have passed their 65th birthday and would be retroactive to October 1, 1976. Although a number of amendments to the Act have been proposed there is no current forecast as to when it will be tabled in the Legislature.

The Committee has some concern that the proposed amendment applies only to persons who have reached compulsory retirement age (65). Neither the original Ombudsman's recommendation nor Recommendation No. 24 of the Committee's Third Report addressed the question of limiting the application of the amendment to that category of persons. The Committee is mindful that the proposed amendment will only apply if persons are re-employed by some department or ministry of the Crown. Superannuitants of whatever age may obtain employment in the private or other government sectors and not be subject to a reduction of pension benefits.

It may be that for all practical purposes the number of persons caught by the present legislation who are under 65 are relatively few. Accordingly, the Committee does not intend to pursue this matter further beyond ensuring that the proposed amendment is in fact passed. When that occurs the Committee will consider its recommendation to have been implemented.

Ministry of Health

Three recommendations made by either the Ombudsman or the Committee have yet to be satisfactorily implemented.

Recommendation No. 1 of the Ninth Report of the Select Committee

"that all decisions made by O.H.I.P. in respect of any claim made for benefits pursuant to Code R990 (now R991) be subject to the appeal procedure set out in the General Manager's Directive dated May 21, 1981 and the

Memorandum of the Director of the Professional Services
Branch dated August 13, 1981."

It has been the position of the Ministry and O.H.I.P. that where a claim for benefits is denied on the grounds that the procedure is available in Ontario there is no appeal available of that decision.

There was no dispute by the Ministry that where the medical or hospital procedure performed out of the jurisdiction is not available in Ontario then an appeal is available from the General Manager's decision either to reduce the amount claimed or deny it in full. However, the real problem arises where the procedure in question is, in the opinion of the General Manager, available in Ontario and the claim is reduced from the amount charged to the amount stipulated in the O.H.I.P. fee schedule. In that case the General Manager believes that he has no discretion as to entitlement or amount; he is bound by the fees stipulated in the schedule. In those cases O.H.I.P. does not inform the persons of any right of appeal.

In the Committee's opinion, decisions made in respect of claims for benefits for services rendered outside of Ontario - whether or not it is determined ultimately that the services were available within Ontario - are "R991 decisions". In other words, a person should not be deprived of the right to be advised of the right to appeal simply because the General Manager or his designate is of the opinion that the service is available in Ontario.

The Ministry has confirmed to the Committee that an O.H.I.P. decision to reduce a claim because of a determination that the service is available in Ontario can be appealed. It seems however that by some "technical" interpretation of the Committee's recommendation those persons have not been notified at the time of the decision of their right to appeal. The Committee expects hereafter that O.H.I.P. will comply with all aspects of the Committee's recommendation so that all persons who have submitted claims to O.H.I.P. for payment for services rendered outside of Ontario are advised of their right of appeal when they are notified of the decision.

Ombudsman's Report No. 3 - Detailed Summary No. 40

In that summary the Ombudsman recommended inter alia:

"that the Nursing Homes Act 1972, be amended in order that provisions be made for the successful candidate for the construction of a new home to make application for a conditional licence immediately upon the making of the award to him. This licence should be conditional on compliance with the terms of the proposal and any subsequent stipulations imposed by the Ministry prior to the granting of an unconditional licence."

To date the necessary amendments have yet to be enacted although the Ministry has agreed to comply with the recommendation.

The Committee was advised by the Ministry that while it still intended to incorporate the amendment into the Nursing Homes Act no projection could be made as to when that would occur. Six years from the date of the initial Ombudsman's recommendation is an inordinately long period of time for a Ministry to comply particularly when compliance comes under the heading of "house cleaning amendments." The Committee expects that the Ministry will table during the next session of the Legislature an amendment that will once and for all comply with the recommendation.

Committee Report Five - Recommendation No. 27;
Committee Report Six, Recommendation No. 1

Recommendation No. 1 in the Committee's Sixth Report stated:

"that the Ministry of Health consider what changes should be made to the Public Hospitals Act and Section 47 in particular, including changes in the quorum provisions and length of membership respecting the Hospital Appeal Board. Further, the Ministry of Health cause an enquiry to be made in the provisions of the Public Hospitals Act to identify and correct any act flowing from Sections 44 to 50 of the Act which may be improperly discriminatory."

As a result of that recommendation the Minister commissioned an enquiry by the Ontario Council of Health. The Council's Report was received and considered by the Ministry and subsequently meetings were held with representatives of both the Ontario Medical Association and the Ontario Hospital Association.

In its Eighth Report the Committee reminded the Minister of Health "that to the extent that the Council of Health identifies appropriate legislative change and so recommends to the Minister, the Committee will review those legislative changes as necessary to full comply with the recommendations in its Sixth Report".

The Council of Health's Report recommended an amendment to Regulation 865 of the Public Hospitals Act that hospitals be required to establish criteria for the appointment or reappointment of persons to the staff of public hospitals. The Committee was advised that the Ministry has drafted an amendment to the Regulation and it is expected that it will be enacted shortly. In the Committee's opinion if the amendment in substance provides that hospitals are required to pass by-laws providing that their Medical Advisory Committees make recommendations to the Hospital Appeal Board concerning every application for appointment or re-appointment to the hospital medical staff based on established criteria, then it would appear to comply with the recommendation contained in the Ontario Council of Health's Report.

The Committee and the Ombudsman share a concern that the Ministry has not to date invited submissions from the public on the issues raised by the Council of Health in its report. The Committee expects that before amending legislation is finalized, the public will be given an opportunity to make representations to the Ministry on the relevant issues.

Ministry of Housing

The Committee in Recommendation No. 3 of its Eighth Reported stated

"that the Ontario Housing Corporation immediately conduct a review and study of its manuals and the decision making functions of housing authorities in particular for the purpose of amending its manuals to give housing authorities more guidance in order that the rules of administrative fairness will be more strictly adhered to".

The Corporation is continuing to revise its manuals and accordingly the Committee has not fully reviewed and considered whether there has been full compliance with the Recommendation.

However, it has considered the new appeals policy enacted by the Corporation which will allow applicants and tenants of public housing to seek a "review of decisions made by local housing authority". The Ministry has acted positively in respect of the recommendation. However the Committee has some concerns respecting the policy. First, the same tribunal will sit in "appeal" of its own decision. Secondly, there is an absence of guidelines or principles set out in the new policy to assist the tribunals with the criteria to be followed in determining whether or not the original decision should be altered.

The Committee accepts the Ministry's comment that this process is new and will continue to evolve. However further changes are necessary immediately to reduce many of the difficulties which are inherent in a process whereby a decision making body is set up as its own "Court of Appeal". If that process is to remain then at the least specific guidelines and criteria are required to assist in the "appeal process". The process must not only be fair but must be seen to be fair to those "appealing".

The Committee intends to pursue this matter further with the Ministry during its summer sittings.

Workers' Compensation Board

In its Seventh Report the Committee recommended, with respect to the Ombudsman's recommendation contained in Summary No. 38 of his Sixth Report, that the Workers' Compensation Board reconsider, by hearing, its decision of

December 15, 1971. In that hearing the Board was required to at least hear fresh evidence respecting the relationship between the complainant's symptoms and the compensable accident both from the medical referee appointed in 1971 and the psychiatrist retained by the Ombudsman during the course of his investigation.

On October 24, 1979 the Board directed that all relevant evidence including the Ombudsman's Report and the recommendation of the Select Committee be referred to a medical referee for a further opinion and report. The Board, after receiving the medical referee's report determined that the policy of benefit of the doubt was not appropriate and thereby denied the complainant entitlement.

The Committee in its Eighth Report after considering the Board's decision on reconsideration noted that it had:

"grave reservations that the Appeal Board Panel in this matter considered the application of the policy of the benefit of the doubt as intended by the Committee and as articulated by the corporate Board policy itself. It is apparent to the Committee on the face of the Board's decision that the Appeal Board Panel took extraordinary steps to avoid applying the policy of the benefit of the doubt. It made findings of credibility against the complainant and his wife and resorted to the Canadian Medical Directory (25th Annual Edition) to assist it in assessing which psychiatric opinion it preferred.

The Appeal Board Panel may have inadvertently cast itself in the role of an adversary vis-a-vis the complainant and his wife and vis-a-vis the psychiatrist in question. After those issues are fully discussed and explained to the Committee it will report to the Legislature with any appropriate recommendations.

One might take from the Appeal Board's comments on pages 4 and 5 of its decision that the applicability of the policy of benefit of the doubt was determined by the contents of the two psychiatrists' expertise, qualifications and experience as recorded by the Canadian Medical Directory. If that be so then the Committee is concerned that the Appeal Board Panel may have acted beyond the scope of and intent of the policy and the Act itself."

Subsequently the Committee received written submissions from both the Board and the Ombudsman respecting its comments. The Ombudsman submits that the psychiatrist retained by the Board and the psychiatrist retained by his office are in agreement concerning the diagnosis of post traumatic neurosis and that the compensable accident was some factor in the development of the neurosis. The area of disagreement is the significance of the accident and whether it is sufficient to warrant an award of benefits in this case. Finally, the Ombudsman submits that when the cumulative medical evidence relied upon by the Board (on the cause of the post-traumatic neurotic condition) is weighed against the cumulative evidence of the complainant's family doctor and the Ombudsman's psychiatrist on the same issue, the evidence is "approximately equal in weight." In those circumstances the Board should apply the policy of benefit of the doubt to this case and award the complainant the appropriate benefits.

The Board on the other hand continues to prefer the evidence of its medical specialists and the medical referee as more definitive, conclusive and generally made closer in time to the date of the accident. The Board further dismisses the evidence of the family physician as lacking in objectivity by reason of his close association with the complainant. The Board questions whether the family physician has sufficient qualifications to render an opinion on the complainant's tendency to over-reaction and hypochondriasis.

The Committee notes that the submission of the Workers' Compensation Board was from the Appeal Board panel which rendered the decision which has caused this Committee concern. By its submission the panel continues to adopt an adversarial role vis-a-vis the complainant and his attending physicians (family doctor and psychiatrist). The Committee finds that role to be inappropriate. The Board is required by statute to adjudicate on issues, not represent the evidence of one side of an appeal.

In the Committee's opinion the panel has not given adequate consideration to the evidence of the complainant's attending physicians, including the psychiatrist retained by the Ombudsman, in assessing whether the policy of the benefit of the doubt is applicable. It has made assessments of the qualification and abilities of certain physicians without ever having considered any medical evidence

first hand. ACCORDINGLY, THE COMMITTEE RECOMMENDS THAT THE WORKERS' COMPENSATION BOARD RECONVENE A HEARING ON THIS MATTER AND CONSIDER THE EVIDENCE OF THE COMPLAINANT'S FAMILY PHYSICIAN AND THE PSYCHIATRIST RETAINED BY THE OMBUDSMAN FIRST HAND AND THEREAFTER DECIDE WHETHER THE POLICY OF BENEFIT OF THE DOUBT SHOULD BE APPLIED.⁵

In its Third Report, Recommendation No. 31, the Committee directed the Workers' Compensation Board to amend the Workers' Compensation Act to provide for statutory authority to recover or write-off over payments. That amendment has yet to be enacted. The Committee continues to be assured by members of the Board that it is committed to such an amendment and it will be included in any legislation tabled in the Legislature when the Act is next amended. The Committee urges the Board and the Ministry of Labour to move as quickly as possible in this regard.

Part IV - Recommendations Denied

(i) Ministry of Consumer and Commercial Relations - Liquor Control Board of Ontario

Complaint No. 4

This involves a complaint against the Liquor Control Board of Ontario. The complainant, an operator of a small confectionary store located in a municipal airport in Northern Ontario, has since October, 1977 unsuccessfully attempted to obtain permission from the Liquor Control Board of Ontario to establish an agency for the sale of liquor in his store. The main purpose of the application is to provide a convenient facility for the purchase of liquor by U.S. tourists who use the airport in relatively large numbers, during hours and under such conditions as to preclude them from making purchases at the nearest L.C.B.O. outlet, some six miles away.

The Board has refused the complainant's application on the grounds that:

- (a) The proposed outlet would be closer than 25 miles from the nearest L.C.B.O. outlet, and would thus not comply with the Board's written policy;
- (b) The Board has not determined that there is a need for such an outlet which would be operated within 6 miles of the nearest L.C.B.O. outlet and;
- (c) That any facilities at airports in the Province of Ontario shall only operate as "duty free outlets" pursuant to the relevant legislation.

The Ombudsman, as a result of his investigation, determined, inter alia, that there was significant support for the application from certain members of the Assembly and from other public and private officials in the area; that the Board had on other occasions made exception to its "25 mile" policy by permitting agencies to operate within a 25 mile radius of the nearest L.C.B.O. outlet; and that the Board's additional concern for the potential adverse effects on the native people by the

establishment of such an outlet was unfounded. He accordingly concluded that a considerable number of American tourists who land and make connecting flights at the airport are prevented from making purchases of Canadian liquor and in the circumstances of this case are in fact "remote" from a conventional liquor outlet. He determined pursuant to Section 22(1) of the Ombudsman Act that the Board's denial of a liquor agency authorization to the complainant was unreasonable. He therefore recommended pursuant to Section 22(3)(c) of the Act:

"that the Board allow (the complainant) to sell liquor at his store under the authority of an agency licence to bona fide tourists and that such outlet ought to be operated during appropriate hours in which the liquor store located nearby is closed."

The Board referred the Ombudsman's recommendation to the Cabinet for consideration. Cabinet subsequently decided to uphold the Board's decision not to permit the establishment of the outlet. The Board subsequently informed the Ombudsman that it would not implement his recommendation.

The Committee is not fully aware of the reasons why the matter was referred to Cabinet. In any event Cabinet's involvement does not bind or affect the Committee in its consideration of this matter.

The Committee is unable to support the recommendation of the Ombudsman in this case. As of this date there is no liquor outlet of this type that is operated in any municipal airport in Ontario. There is no liquor outlet of any type which is permitted by the Board to operate during the hours of 10:00 p.m. to 10:00 a.m., the hours when the conventional outlets are closed. While the Board has conducted a couple of "pilot projects" respecting extended hours of outlets, nothing conclusive has been developed thereby. The apparent benefit which the Ombudsman believes would accrue to American tourists who pass through this airport and the consequent additional business available to the complainant, are not sufficient grounds to establish the precedent that this recommendation contemplates without more extensive information on the benefits which would accrue to the local community and the public generally.

The Board has advised the Committee that it sees no current need for an outlet at the airport in question. This position has been taken without any actual study or analysis of the matter with particular reference to the findings in the Ombudsman's Report. That is, no real assessment has been made to assess whether the needs of the local community in question and the public generally would be served by the establishment of such a liquor agency at the airport in question.

In the Committee's opinion it is incumbent upon the Board, before refusing an application of this nature, to make thorough investigation and analysis of the need and benefit to the local community and the public in general. ACCORDINGLY, THE COMMITTEE RECOMMENDS THAT THE LIQUOR CONTROL BOARD OF ONTARIO UNDERTAKE SUCH A STUDY AND REVIEW AND REPORT TO IT AS SOON AS POSSIBLE ON THE NEED FOR SUCH AN OUTLET. IN UNDERTAKING THIS INVESTIGATION THE BOARD SHOULD HAVE REGARD FOR THE CRITERIA DISCUSSED WITH THE COMMITTEE ON SEPTEMBER 8, 1982.⁶

(ii) Ministry of Health

Complaint Summaries No. 9 and 10

These two cases were considered together by the Committee since the issues are identical. That is whether O.H.I.P. should provide coverage for service performed by a dentist in a hospital setting when the procedure can, with appropriate legal authority, be performed by either a physician or a dentist in that setting.

In these two cases, surgical and related procedures were performed by oral surgeons, duly qualified and certified in the hospital setting, upon the referral of a duly qualified medical practitioner. The procedures in question can and are frequently performed in the same setting by either an oral surgeon (dentist) or a qualified medical practitioner specialized in surgery (frequently a plastic surgeon). However, at the time the O.H.I.P. fee schedule did not provide coverage when such procedures were performed by a dentist. The applications for payment of the dentists' procedures were denied.

The former General Manager indicated that he did not have any discretion under the Act to make payment in such cases. He did acknowledge that if the procedures had been performed by physicians coverage under the Plan would have been granted.

The Ombudsman, after completing his investigations, concluded in both cases that the Ministry's decisions not to pay the appropriate parts of the medical services was,

"In accordance with a rule of law or provision of any act...that is or may be unreasonable...or improperly discriminatory".

In both cases he found that the surgery was necessitated by earlier surgery and the work performed was "unusual dental surgical procedure". Both claims would have been paid in part if the surgery had been performed by a plastic surgeon or other duly qualified medical practitioner. He further found in both cases that the complainants were not aware at the time of surgery that O.H.I.P. would not pay for the procedures if they were performed by a dentist.

Accordingly, he recommended in both cases:

"that the Ministry of Health pay that portion of (the complainants') claim(s) which would have been an insured benefit had the operation(s) been performed by a plastic surgeon."

He further recommended:

"that Section 43 of Regulation 323/72 of the Health Insurance Act, 1972 be amended to permit the General Manager to determine the amount of payment for exceptional cases where medical procedures are performed by persons in possession of the necessary hospital privileges who are not physicians."

(In the context of this complaint such persons are assumed by the Committee to be dentists with appropriate qualifications and with the required hospital privileges).

The Ministry declined to accept the recommendations in both cases, essentially on the grounds that its policy decisions to exclude certain dental services from coverage under the Act were sound, based on considered judgment, after consultation with the professions, as to what combination of services and benefits will constitute the most beneficial program for the public within the very limited purposes and resources of the program.

The Ministry is also of the view that officials administering the Plan should not have discretionary authority to provide coverage in exceptional circumstances. It is believed that the introduction of such discretion could very well be arbitrary, unfair or discriminatory and produce financial implications which would be totally unacceptable to the Government.

Lastly, the Ministry noted that in neither case was the patient informed by the referring physician or the oral surgeon that the services provided would not be covered. (The Committee also notes that since the July, 1982 amendments to the O.H.I.P. schedule of benefits for procedures of dentists, some of the services in question are now covered.)

Ministry representatives stated that the Government's involvement in the dental field has been limited as a matter of policy. However, the Government pays the hospital expenses for anesthetists' services, use of operating theatres etc. when a service is performed by an oral surgeon. In other words all relevant costs associated with the procedures performed in the hospital by an oral surgeon are covered except the oral surgeon's service.

The Committee supports the recommendations of the Ombudsman in these two cases. The critical issue is not what qualified profession performs the procedures in a hospital setting but whether those procedures should be included in O.H.I.P.'s schedule of benefits. Since they are covered if performed by a physician, the Ministry has obviously decided that they should be included. There is no

acceptable reason for denying payment for services rendered by an oral surgeon (dentist) in a hospital setting while paying for the identical services if performed by a medical practitioner. In the Committee's opinion such coverage can be made available for such dental services performed in a hospital setting without jeopardizing the Government's policy of providing coverage for a limited range of dental services.

As to the question of the Government's concern that the General Manager of O.H.I.P. be given discretion to determine coverage in appropriate circumstances, the Committee finds that to give him the discretion as contemplated by the Ombudsman's recommendations would not significantly expand the scope of his authority particularly since he would be acting pursuant to guidelines including "exceptional cases" and hospitalization as "necessary". Unlike some representatives of the Ministry of Health, the Committee has every confidence that the General Manager would not exercise that discretion in an arbitrary, unfair or discriminatory manner. Even if he were to do so the law provides adequate protection to those affected.

ACCORDINGLY THE COMMITTEE RECOMMENDS THAT THE MINISTRY OF HEALTH PAY THAT PORTION OF THE CLAIMS OF COMPLAINANTS CONTAINED IN CASE SUMMARIES 9 AND 10 WHICH WOULD HAVE BEEN AN INSURED BENEFIT HAD THE OPERATION BEEN PERFORMED BY AN PHYSICIAN. THE COMMITTEE FURTHER RECOMMENDS THAT SECTION 43 OF REGULATION 323/72 OF THE HEALTH INSURANCE ACT, 1972 BE AMENDED TO PERMIT THE GENERAL MANAGER TO DETERMINE THE AMOUNT OF PAYMENT FOR EXCEPTIONAL CASES WHERE MEDICAL PROCEDURES ARE PERFORMED BY PERSONS IN POSSESSION OF THE NECESSARY HOSPITAL PRIVILEGES WHO ARE NOT PHYSICIANS. THE COMMITTEE INTENDS THAT THESE RECOMMENDATIONS APPLY ONLY TO MEMBERS OF THE ROYAL COLLEGE OF DENTAL SURGEONS WHO HAVE OBTAINED THE NECESSARY HOSPITAL PRIVILEGES.⁷

Detailed Summary No. 11

The complaint in this case deals with a decision of the Ontario Board of Directors of Chiropractic which refused to permit the complainant to write the Ontario Chiropractic Licensing Examination. The Board refused because the complainant attended a college in the United States which operates under a semester system which permitted him to complete the required course in less than four calendar years. The Board has consistently required that persons seeking to write the examinations have completed courses in chiropractic which include not less than four academic years of not less than nine months each. That is, the Board stipulates that a required course of study be spread over four calendar years with vacations taken between each of the years. Because the complainant did not take vacations between each "year" of study he was prevented from taking the licencing examination.

The Ombudsman, after completing his investigation, determined pursuant to Section 22(1)(b) of the Ombudsman Act that it was unreasonable of the Board to interpret Section 25(2) of the Drugless Practitioners Act to require that four academic sessions of nine months be separated by three month vacations. He accordingly recommended pursuant to Section 23(3)(c) and (d) of the Ombudsman Act:

"that the Board alter its practice of interpreting the Regulation in this matter and acknowledge that (the complainant) has satisfied the requirements of the Regulation and is therefore eligible to write the Ontario Chiropractic Licencing Examination."

The Board declined to implement the Ombudsman's recommendation essentially on the grounds that:

1. The Board has consistently interpreted the regulations to mean four academic sessions of nine months in each of four calendar years;

2. Its interpretation of the regulation has traditionally served Ontario well and is in line with other health disciplines; and
3. Its interpretation of the regulation gives the Board an ability to control the quality of its chiropractors.

The Committee supports the recommendation of the Ombudsman in this case. The Board has taken a narrow technical approach to its interpretation of the regulation.

Section 25(2) of Regulation 228 provides that

"The course in Chiropractics shall include not less than four academic years of nine months each with at least 4,200 hours of instruction in the following subjects."

The purpose of the regulation is to ensure that applicants obtain a minimum standard and quantity of instruction not that they take Summer vacations between each academic year. The operative phrase in the regulation is "academic years of nine months". It is irrelevant if those years are strung together without any break. The anomaly in this case is that the complainant has, in terms of hours of instruction, exceeded the minimum required by the regulation in a shorter period of time. The Committee is mindful of the assurance by members of the Board of Chiropractic that quality of instruction is not an issue in this case.

ACCORDINGLY, THE COMMITTEE RECOMMENDS THAT THE BOARD OF CHIROPRACTIC OF ONTARIO ALTER ITS PRACTICE OF INTERPRETING SECTION 25(2) OF REGULATION 228 BY REQUIRING APPLICANTS FOR THE ONTARIO CHIROPRACTIC LICENSING EXAMINATION TO HAVE TAKEN A COURSE OF STUDY CONTAINING FOUR ACADEMIC SESSIONS OF NINE MONTHS SEPARATED BY THREE MONTH VACATIONS. THE COMMITTEE FURTHER RECOMMENDS THAT THE BOARD OF CHIROPRACTIC OF ONTARIO ACKNOWLEDGE THAT THE COMPLAINANT HAS SATISFIED THE REQUIREMENTS OF THE REGULATION IN THIS REGARD AND IS THEREFORE ELIGIBLE TO WRITE THE ONTARIO CHIROPRACTIC LICENSING EXAMINATION.⁸

Workers' Compensation Board

Complaint No. 19

This complaint concerns a decision of the Appeal Board panel dated March 12, 1979 denying a claim for an increased attendance allowance. The complainant contends that the attendance allowance granted does not adequately reflect his degree of helplessness, caused by industrial accident.

The Ombudsman's investigation revealed that in June, 1974 the complainant fell from a scaffold receiving a right sided basil skull fracture. He was hospitalized and required significant neurosurgery. As a result of the injuries the complainant was considered to be totally disabled and unemployable due to visual impairment, deficiencies of mental function, dizziness, residual left side partial paralysis and post injury personality changes. In January, 1976 he was given a two year provisional permanent disability award by the Board.

In February, 1976 the Board granted the complainant an attendance allowance of \$60.00 based on a "Group 1" categorization. This was changed to Group 2 in June 1977 and the attendance allowance was accordingly increased.

Attendance allowances are granted by the Board pursuant to Section 51(1)(c) of The Workers' Compensation Act. To assist in determining the extent of an allowance to be granted the Board has established 7 categories or groupings. The groupings in terms of the degree of assistance required, run from Group 1 (minimal actual service) to Group 7 (complete nursing and other related care on a 24 hour basis). The lowest attendance allowance is given for persons within the first group. It increases with each successive group classification. Head injuries are covered by Groups 1, 2, 3 and 6. All require some degree of supervision or attendance by third parties.

The Ombudsman found that the complainant requires supervision and assistance in daily living, and that the actual cost of that supervision and assistance probably exceeds the amount of the attendance allowance which he has been

awarded. He further found that the Board does insist on matching an injured worker to its established groupings rather than determining the actual reasonable costs of providing services needed in each case. Here because it determined that the complainant was in "Group 2", the Board fixed the allowance at the Group 2 level of compensation. He therefore concluded pursuant to Section 22(1)(b) of the Ombudsman Act that the Appeal Board's decision of March 12, 1979 was unreasonable

"due to the fact that it was based on a policy concerning attendance allowances which is itself, in part, unreasonable in that it is too restrictive."

He also concluded that it was unreasonable for the Appeal Board panel to have concluded that the evidence presented on appeal was not sufficient to persuade it to depart from its policy allowance guidelines in this case.

Accordingly, the Ombudsman recommended pursuant to Section 22(3)(d) of the Act that the Board

"alter its policy concerning attendance allowances to take into consideration the reasonable costs of providing supervision for those injured workers who, as a result of accident, require someone to be in attendance at all times in order to provide that supervision."

He further recommended that pursuant to Section 22(3)(g) of the Act that the Appeal Board

"revoke its decision of March 12, 1979 and award (the complainant) an attendance allowance sufficient to cover the reasonable costs of providing the supervision and assistance which his condition necessitates."

The Board declined to implement the Ombudsman's recommendation. It disagreed with the Ombudsman's conclusion as to the nature and extent of supervision required for the complainant. The Board continued to rely upon the assessments made from time to time of the complainant by its staff which it said supported a Group 2 placement with the need for minimal actual service.

However, the Board did not address the question of the inadequacy of the specific attendance allowance awarded against the actual cost necessary to provide the required services. The Ombudsman contends that the Board's policy of assigning fixed amounts to Groups is too restrictive and fails to assess the individual needs of the injured worker. This complainant has been given a fixed amount as an attendance allowance by the Board not because of his individual needs but because the Board has assigned him to the Group 2 category.

The Committee notes that the Board is of the opinion that each case of attendance allowance need is considered on its individual merits and that a determination is in fact made of the reasonable costs for providing attendance services. The Board considers itself bound only by the Workers' Compensation Act and not by any policy or guideline which it develops from time to time for the purpose of administering the Act. The Committee assumes that this means that there are circumstances wherein the Board would grant an attendance allowance in amounts different from those specified in its Groupings.

The Committee supports the principles contained in the recommendations of the Ombudsman. Certainly in cases of this nature the Board must assess the individual attendance needs of the injured worker and the actual costs thereof having regard to the nature and extent of those needs and the particular location in the province where the worker resides. An injured worker might, within the meaning of Group 2 of the Board's guideline, require minimal service but the actual cost of that service might well be double or triple the attendance allowance stipulated by the guidelines.

The Committee, however, is unable to accept the recommendations of the Ombudsman as framed. The Board advised the Committee that its policy and guidelines in this area were constantly under review both in respect to levels of care and attendant costs. Since the Board has already assured the Committee that it does not rigidly adhere to these guidelines, it should not have to alter any policy but merely hereafter award the actual cost of "attendance" in each case.

THE COMMITTEE RECOMMENDS THAT THE APPEAL BOARD PANEL OF THE WORKERS' COMPENSATION BOARD IMMEDIATELY REVIEW ITS DECISION OF MARCH 12, 1979 TO DETERMINE THE REASONABLE AND ACTUAL COSTS OF PROVIDING SUPERVISION AND ASSISTANCE WHICH THE CONDITION OF THE COMPLAINANT REQUIRES AND IF NECESSARY INCREASE THE AMOUNT OF THE ATTENDANCE ALLOWANCE.⁹

THE COMMITTEE FURTHER RECOMMENDS THAT THE WORKERS' COMPENSATION BOARD REVIEW, BY JUNE 30, 1983, ITS POLICY CONCERNING ATTENDANCE ALLOWANCES TO TAKE INTO CONSIDERATION THE REASONABLE COST OF PROVIDING SUPERVISION FOR THOSE INJURED WORKERS WHO, AS A RESULT OF ACCIDENT, REQUIRE SOMEONE TO BE IN ATTENDANCE, IN ORDER TO PROVIDE THAT SUPERVISION.¹⁰

Complaint No. 20

This complaint concerns a decision of the Appeal Board Panel of the Workers' Compensation Board dated July 4, 1979 which denied the complainant's claim for a permanent disability pension on the grounds that the hearing loss suffered by the complainant was insufficient to warrant such an award. The Board in its decision found that the complainant had established a hearing loss and that because of the loss the complainant's employer felt obliged to assign him to a different position with a consequent decrease in wages. The Board already has granted a supplemental pension pursuant to Section 43(5) from the date of his transfer to the lower paying position.

The Ombudsman determined that, for periods between 1972 and 1975 and again from 1976 to 1977, the complainant was intermittently exposed to hazardous levels of industrial noise while working. In 1977 it was established that he had suffered a bilateral hearing loss. To avoid further deterioration of his hearing he was transferred by his employer to another department but at a lower wage.

In 1978 a medical specialist retained by the Board calculated the loss of hearing in the complainant's right ear at 25 decibels and 41 decibels in the left ear.

The Board's specialist concluded that the complainant had a sufficient degree of bilateral noise-induced hearing loss to warrant allowance for medical aid only but insufficient for a pension award.

The Board has refused the complainant's claim for a pension award on the ground that the cumulative affect of his hearing loss is not sufficient to be considered a compensable permanent disability. The Board has, pursuant to section 43(3) of the Act, formulated a rating schedule of percentages of impairment of earning capacity which is used to determine compensation in permanent disability cases. By that policy the Board has determined, presumably based upon medical and other relevant evidence that a hearing loss less than 35 decibels in both ears does not constitute a compensable permanent disability. That is, unless a person has suffered more than a 35 decibel loss in both ears, the Board refuses to accept that the permanent disability could have caused the required impairment in earning capacity. Accordingly, unless the hearing loss is greater than the 35 decibels in each ear no permanent disability award is made pursuant to Section 43 of the Act.

The Ombudsman further determined that the complainant did suffer a permanent hearing loss resulting from his employment. As a result of that loss the complainant could not continue his previous employment and was forced to accept other duties at a reduced wage, to eliminate the risk of further hearing deterioration.

The Ombudsman has interpreted Section 43(1) of the Workers' Compensation Act as requiring the Board to determine the impairment of a worker's earning capacity once it has been established that a permanent disability exists. He concluded from the circumstances of this case that the Appeal Board Panel, although acknowledging the existence of a permanent disability, had not considered the complainant's request for a permanent partial disability award or assessed the amount of the award.

His investigation further revealed that the Board determines eligibility in these cases by adopting the position that if a specific injury or disability does not meet the criteria established in the rating schedule formulated pursuant to Section

43(3), then compensable permanent disability does not exist for the purpose of Section 43(1). In other words, the Board determines whether an impairment of earning capacity exists by reference to a pre-determined rating schedule and not to the circumstances of each particular case. It has thereby abrogated its decision making under 43(1) to a predetermined policy. In the language of the section the "rating schedule" formulated in 43(3) "as a guide in determining the compensation payable in permanent disability cases" is employed as a fixed rule in determining compensable permanent disabilities. No other factors are considered by the Board.

Accordingly, the Ombudsman formed the opinion that such use of the 43(3) guidelines was not contemplated by the legislation and the Board, in failing to consider impairment of earning capacity first under Section 43(1), has fettered its discretion to assess the amount of a permanent disability award in this case.

He therefore determined pursuant to Section 22(1)(b) of the Ombudsman Act that the Appeal Board Panel in its decision of July 4, 1979 unreasonably failed to exercise its discretion to assess the complainant's claim by treating what are intended to be guidelines as prerequisites to entitlement and in so doing failed to give proper consideration to a claim for a permanent partial disability award. The Ombudsman therefore recommended, pursuant to Section 22(3)(c) of the Act

"that the Appeal Board Panel should cancel its decision of July 4, 1979, grant a new hearing and reconsider (the complainant's) entitlement in this claim exercising discretion given to it under Section 42 (now 43) of the Workmen's Compensation Act."

The Board declined to implement the Ombudsman's recommendation on the grounds that the complainant's case was one wherein it was entirely appropriate to apply the 43(3) guidelines but only after it considered "all of the evidence". The Board took the position that failure to apply the guidelines in this case would have resulted in a decision which would have been "completely arbitrary". The Board maintained that it did exercise its statutory discretion only after determining that the guidelines "pertained to the circumstances of (the complainant's) particular case". The Board omitted to explain how this determination was made or what criteria it considers in deciding whether guidelines should pertain to this case.

The Committee understands that the Ombudsman intends by his recommendation that there should be an independent consideration by the Board on specific available evidence relevant to the complainant's particular circumstances and a specific finding of the Board that vis-a-vis his prior employment he is permanently disabled. The use of the guidelines should only be one factor to be considered by the Board in determining compensation, not disability.

The Committee supports the recommendation of the Ombudsman in this case. At the very least, the Board has given the appearance that its discretion has been fettered by a total reliance upon the provisions of the guidelines in making a determination of compensable permanent disability. The Board has decided for all purposes that a person who suffers less than a 35 decibel hearing loss in each ear does not have a compensable permanent disability. That the Board came to such a conclusion without considering specifically the circumstances of the complainant's hearing loss, prior employment, ability to continue in that employment and consequent diminution of earnings, lends support to the Ombudsman's conclusions.

ACCORDINGLY, THE COMMITTEE RECOMMENDS THAT THE APPEAL BOARD PANEL CANCEL ITS DECISION OF JULY 4, 1979, GRANT THE COMPLAINANT A NEW HEARING AND RECONSIDER HIS ENTITLEMENT IN THIS CLAIM EXERCISING THE DISCRETION GIVEN IT UNDER SECTION 43 OF THE WORKERS' COMPENSATION ACT.¹¹

Complaint Summary No. 21

This case concerns a complaint of an Appeal Board decision of the Workers' Compensation Board dated October 3, 1978 which rejects the complainant's claim for an increase in his permanent partial disability award beyond its then current 65 percent level. The Board found that the complainant had a pre-existing vulnerable personality; that many other factors besides the compensable accident and its sequelae aggravated his emotional state; that the complainant's psychological disability was not entirely related to the industrial accident of April 25, 1969; and that that accident was minor in nature with no significant triggering incident to cause any major psychological disability. These findings were made

notwithstanding that the complainant had never exhibited any symptoms of such a vulnerable personality prior to his "accident".

The Ombudsman, as a result of his investigation, found that on April 25, 1969 the complainant, then age 34, was employed as a machine assembler and was lifting heavy gear with two other employees when he strained his back. In December, 1970, the complainant suffered an exacerbation of back pain and was laid off from work. In May 1972 he underwent a laminectomy disotomy and spinal fusion.

The Ombudsman found that prior to the injury the complainant was successfully employed as a machine assembler, had received commendations and financial awards for contributions to his employer and did not demonstrate any psychological problems nor was he under any mental stress during the time he was employed prior to the "accident".

The Ombudsman formed the opinion, pursuant to Section 22(1)(b) of the Ombudsman Act, that the Appeal Board's decision, which found that the 35 percent award for the complainant's psychiatric disability was adequate, was unreasonable since there was insufficient evidence of a pre-existing psychological condition to justify any reduction in the award. He therefore recommended, pursuant to section 22(3)(g) of the Act

"that the Board revoke its decision of October 3, 1978 and grant (the complainant) the full assessed value of its permanent partial disability pension recognizing the non-organic component of his disability."

The Board declined to implement the Ombudsman's recommendation. However, it agreed to reassess the complainant's case in terms of the current Board policy if the complainant were available for a complete up-to-date re-evaluation. By the Board's current policy a reduction in an award for psychiatric disability is made only to the extent to which the pre-existing condition is shown to influence the injured worker's pre-accident work record and social integration. From the evidence investigated by the Ombudsman there was no manifestation prior to the accident of any pre-existing emotional or psychiatric condition.

The Committee understands the Board's position to be in substance an acceptance of the Ombudsman's recommendation to grant the complainant the full assessed value of his permanent partial disability pension by the application of the current policy. However, the Board considers that the reassessment cannot occur because the complainant has permanently left the country and now resides in Israel.

The Committee supports, in principle, the recommendation of the Ombudsman in this case. The Board's position prior to its offer to reassess the complainant was in the Committee's opinion totally untenable when viewed against the available evidence. The Committee is unable to imagine how a partial disability pension can be reduced because of a presumed pre-existing psychiatric condition when no evidence or medical opinion is available that such condition ever existed or was ever manifested in the complainant's pre-accident behaviour.

The Committee further does not accept that a personal evaluation is necessary to reassess the complainant's entitlement against current policy. The Board throughout this case never assessed or examined the complainant personally before denying entitlement. If a decision to deny benefits can be made without a personal assessment so can a decision to grant benefits. However, the Committee has some difficulty in supporting the Ombudsman's recommendation for the period after the complainant left Canada permanently. The Committee believes that should be left to the Board to decide based upon its current policies and directives on the question of the payment of benefits to persons who no longer reside in Ontario or Canada.

ACCORDINGLY THE COMMITTEE RECOMMENDS THAT THE APPEAL BOARD PANEL OF THE WORKERS' COMPENSATION BOARD REVOKE ITS DECISIONS OF OCTOBER 3, 1978 AND GRANT THE COMPLAINANT THE FULL ASSESSED VALUE OF HIS PERMANENT PARTIAL DISABILITY PENSION RECOGNIZING THE NON-ORGANIC COMPONENT OF HIS DISABILITY UP TO THE DATE THE COMPLAINANT LEFT CANADA PERMANENTLY.¹²

THE COMMITTEE FURTHER RECOMMENDS THAT THE WORKERS' COMPENSATION BOARD ASSESS AND DECIDE WHETHER THE COMPLAINANT

SHOULD HAVE CONTINUING ENTITLEMENT TO THE INCREASED AMOUNT OF THE PENSION AFTER THE DATE HE LEFT CANADA PERMANENTLY.¹³

Complaint No. 22

This complaint concerns a decision of the Appeal Board Panel of the Workers' Compensation Board dated July 24, 1980 denying the complainant entitlement to a temporary supplement under the provisions of Section 42(5) (now 43(5)) of the Workers' Compensation Act.

On January 29, 1974 the complainant suffered a back injury during the course of his employment. The Board granted him entitlement for a lumbar disc degeneration with lumbar root irritation which required surgery in April 1974. For various periods during January 1974 and June 1978 the complainant was awarded temporary total and temporary partial disability benefits. In January 1978 a 20% permanent partial disability award was granted by the Board as a result of the residual low back disability caused by the "industrial" accident of January 1974. As a result of the injuries sustained at work, the complainant, in 1974, changed his occupation from an underground mine shift boss to a survey technician and draftman. The change in position resulted in a loss in earnings.

The main ground of the Board's denial of entitlement to a temporary supplement was that the complainant's post accident earnings at the time of the appeal exceeded his actual pre-accident earnings. The Appeal Board examined the complainant's post-accident earnings and concluded because they were in excess of 75 percent of the pre-accident earnings, the complainant was not entitled to benefits under Section 43(5).

The Ombudsman, by his investigation, found that the Board failed to consider all of the factors set out in its relevant policy (in determining whether a supplement was to be granted). By that policy the Board is required to take the following factors into account when considering a supplement:

- (a) age;
- (b) pre-accident occupation;
- (c) years of service;
- (d) education;
- (e) locality;
- (f) "other income", considered to be unemployment insurance benefits, supplementary unemployment benefits, Canada Disability Pension benefits, early retirement pension, long term disability pension;
- (g) socio-economic factors; and
- (h) the employee's availability for work.

In this case it only considered the relationship between current earnings and pre-accident earnings. The Ombudsman considered all factors against the relevant evidence and concluded that the complainant would be entitled to such a supplement.

He formed the opinion, pursuant to Section 22(3)(b) of the Ombudsman Act, that the Appeal Board Decision of July 24, 1980 was unreasonable as it did not address all of the appropriate factors to be taken into account when considering a supplement under Section 43(5) of the Workers' Compensation Act in order to determine whether the impairment of earning capacity of the complainant was significantly greater than was usual for the nature and degree of his injuries. He further concluded that under Section 43(5) of the Workers' Compensation Act the Board, in assessing entitlement to a temporary supplement, must determine first whether the complainant's impairment of earning capacity is significantly greater than is usual for the nature and degree of the injury and that such consideration must include an assessment of all of the factors contained in the Board's policy. He concluded that the Appeal Board had apparently satisfied itself with a comparison only of the complainant's pre-accident earnings and his present earnings which as the Ombudsman believed, by authority of the decision of the Divisional Court of the Supreme Court of Ontario in Re Gianoukakis and Workmen's Compensation Board (1978) 21 O.R. 2nd, p. 250, was contrary to law.

The Ombudsman accordingly recommended pursuant to Section 23(3)(g) of the Ombudsman Act

"that the Appeal Board reconsider its decision, with a view to granting (the complainant) a temporary supplement to his permanent partial disability award, on the basis of a full consideration of the appropriate test for entitlement to such a benefit."

He further recommended pursuant to Section 22(3)(f) of the Act that the reasons be given for the Board's decision after reconsideration.

The Committee understands that the Ombudsman by his recommendation does not require that a temporary supplement be granted, although he believes entitlement is justified. Rather, he wished the Board to reconsider the matter giving full and appropriate consideration to all of the factors in its policy.

The Board accepted the Ombudsman's recommendations and in fact reconsidered its decision in November, 1981. The Board, after stating that it had carefully considered the conclusions and recommendations of the Ombudsman as well as the provisions of Section 43(5) of the Workers' Compensation Act and the circumstances of the complainant's case, concluded that the complainant's impairment of earning capacity was not "significantly greater than is usual for the nature and the degree of his injury". In its decision the Board noted that its policy with respect to the determination of whether impairment of earning capacity is significantly greater than usual requires it to take into account income from sources other than any permanent disability award under Section 43(1). If the income from all the sources in addition to the pension award exceeds 75 percent of the pre-accident wage, the Board then considers that the impairment of earning capacity is not significantly greater than usual, having regard for the nature and degree of the injury.

The Board believes that its reconsideration included a specific consideration of the "threshold question" of whether impairment of earning capacity was significantly greater than usual, having regard for the nature and

degree of the injury. However, the Board appears, in addressing that "threshold question", to have based its decision totally on a comparison of current income to pre-injury income. The Board has apparently adopted a policy that anyone whose current earnings from all sources exceeds 75 percent of pre-accident income, cannot be considered one whose earning capacity is significantly greater than is usual for the nature and degree of the injury.

The Ombudsman is of the opinion that the Board's reconsideration of its initial decision with the reasons set forth is not an adequate or appropriate response to his recommendations. He believes that the reconsideration does not answer the concerns set out in his report. He also believes that the reconsideration is contrary to the Gianoukakis decision.

The Board, on the other hand, takes the position that in determining the "threshold question" whether earning capacity is significantly greater than usual, it is entitled to base its decision solely on the comparison of current to pre-accident income.

The question therefore that the Committee must decide is whether the the Board's reconsideration is an adequate or appropriate response to the Ombudsman's recommendations. There is no doubt that, whereas the Board's policy requires it to take seven factors into consideration when considering a supplement of this nature, the Board here decided the matter exclusively on the "other income" factor in its policy.

The Committee notes that the policy (document 33 20 02; See Schedule 4) does not provide that if a worker's current earnings exceed 75 percent of his pre-accident earnings he or she shall be not be entitled to a 43(5) supplement. Nor is there any such provision in the Board's directives. (Schedule 5). Section 43(5) itself clearly does not provide that current earnings in excess of 75 percent of pre-accident earnings shall be the sole criterion in concluding that impairment of earning capacity is not significantly greater than is usual for the nature and degree of injury.

The Committee, after carefully considering the positions of the Ombudsman and the Board, together with the relevant Board policies and directives and the Gianoukakis decision of the Divisional Court of Ontario, is of the opinion that the Board's response to the recommendations is neither adequate nor appropriate. The Board's policy and all applicable directives do not provide that the "threshold question" of whether impairment of earning capacity is significant greater than is usual shall be determined solely on the basis of a comparison of current earnings to 75 percent of pre-accident earnings. Nor do the policy and directives provide that all factors and circumstances to be taken into account must be satisfied before entitlement is granted. Rather, the Committee notes that the directive of the Board dated January 13, 1976 (4,500-7, Section 12) provides that

"any usual cases which do not meet the general criteria will be dealt with equitably and fairly having regard to the provisions of Section 42(5) (now 43(5))."

The Board is prepared, in appropriate circumstances, to determine the question of entitlement, including the degree of impairment of earning capacity upon a consideration of factors other than those stipulated in its policy and specifically regardless of the result of a comparison of current earnings to pre-accident earnings.

The question given by the Statute for the Board to answer in these circumstances is whether "the impairment of earning capacity of the employee is significantly greater than is usual for the nature and degree of his injury". The Board answered that question by regard solely to a comparison of current earnings to pre-accident earnings. In the Committee's opinion it is arguable that the Board has failed to deal with the question remitted to it. The law is clear that if the Board asks itself a wrong question it steps outside its jurisdiction and its decisions are clearly reviewable. This in itself would justify the Ombudsman and this Committee in concluding that the Board's response is neither adequate or appropriate.

The Board seems to feel justified in assessing and denying entitlement in the way it has because the Gianoukakis decision does not deal specifically with the

"threshold questions" of impairment of earning capacity. The Board derives some comfort from the comments of Mr. Justice Osler that:

"The decision does not specifically state whether the Board has examined the evidence to determine if "the impairment of earning capacity...is significantly greater than is usual for the nature and degree of his injury...". Should the Board have stated that such evidence did not persuade it that such was the case we are all of the opinion that Section 74(1)...of the Act would have prevented this Court from reviewing its decision".

The Board is wrong if it believes that the Court by that statement has authorized the Board to determine the question of eligibility for 43(5) benefits in any manner whatsoever. The Court clearly intended by its comment that the Board must determine the question of impairment of earning capacity based upon all relevant evidence and factors. That was not done in this case.

ACCORDINGLY THE COMMITTEE RECOMMENDS THAT THE WORKERS' COMPENSATION BOARD RECONSIDER ITS DECISION OF JULY 24, 1980 AND ITS DECISION OF NOVEMBER 9, 1981 WITH A VIEW TO GRANTING THE COMPLAINANT A TEMPORARY SUPPLEMENT TO HIS PERMANENT PARTIAL DISABILITY AWARD, ON THE BASIS OF A FULL CONSIDERATION OF ALL RELEVANT EVIDENCE AND FACTORS.¹⁴

Part V - Communications Received from the Public

The Committee continues to receive communications from the public. These communications have dealt primarily with comments and concerns respecting the organization and operation of the Ombudsman's office. The majority have been from persons who have lodged complaints with the Ombudsman's office. Since its last report the Committee has not considered any communications received which would warrant any discussions in person to assist it in carrying out one or more of its terms of reference. It will continue to receive these communications and consider them against its terms of reference.

Part VI - Rules for the Guidance of the Ombudsman
in the Exercise of his functions under the Ombudsman Act

The Committee did not consider that any matter considered during its recent hearings warrants the formulation of any additional rules for the guidance of the Ombudsman in the exercise of his functions. In any event, the forthcoming consideration by the Committee of amendments to the Ombudsman Act will of necessity include a consideration of this whole question. Accordingly, the Committee defers any further comment until that time.

However, there appears to be a difference of opinion between the Ombudsman and the Committee on the nature and extent of his functions contained in the Act and in consequence the extent of the Committee's term of reference to formulate general rules.

The Ombudsman has informed the Committee that he believes his functions are confined to investigating the subject matter of complaints and to reporting either specific matters or annually to the Legislature. He believes that the Committee's authority to enact rules is confined to those two functions.

The Committee does not concur with the Ombudsman's position in this matter. It does not intend here to present an exhaustive list of circumstances involving the Ombudsman and his office wherein it has the authority to enact general rules. It merely wishes to comment at this time that the Act clearly contemplates by Section 16(1) that the Ombudsman has multiple functions, not just the single investigating function to which Section 15(1) refers. It is a question of construction of the Act whether the definition of functions includes something more than investigating and reporting. The Committee believes that it does.

Section 16(3) of the Act permits the Ombudsman to "determine his procedures". However those procedures are by that subsection subject to "any rules made under this section". The Committee, therefore, clearly has authority to formulate and propose to the Legislature rules to which any procedures formulated by the Ombudsman will be subject. In fact this was done by the Committee in

previous reports adopted by the Legislature and readily accepted by the first Ombudsman.

The Committee does not view this disagreement as insurmountable. It is even understandable that the Ombudsman has adopted an interpretation of his functions and the Committee's authority in somewhat narrow terms. The Committee is confident that any further disagreement in this area can be resolved in the best interests of all concerned.

HON. DONALD R. MORAND

The Ombudsman | Ontario

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September 15, 1982

Mr. Robert Runciman, M.P.P.
Chairman
Select Committee on the Ombudsman
Legislative Buildings
Toronto, Ontario
M7A 1A2

Dear Mr. Runciman:

I am writing you this letter because, having read the transcript of the hearings of the Select Committee on the Ombudsman for the morning of Tuesday, February 9th, 1982 and for Wednesday, March 10, 1982, and Tuesday, September 8, 1982, and after hearing the intentions of some of the Committee members to review our budget priorities, I am deeply disturbed. My concern stems from the comments, made by some of the members of the Committee, respecting my "travels" and from the Committee's request for a copy of my Office's budgetary submission to the Board of Internal Economy, and salary and job description information for all of my employees.

The fact that no formal response has been forthcoming should not be taken as an indication that I have ignored the Committee's request. Mr. Goodman replied to your letter on February 1, 1982, asking for certain additional information which he felt was necessary in order that I could respond to you. He also had telephone conversations with you, Dr. Graham White, and the Secretary of the Board of Internal Economy, Mr. Flemming, on the subject of the Committee's request. More recently, Mr. McArdle of my Office spoke with you and provided you with documentation containing certain salary information respecting my employees.

I share the view expressed by some of the members, that a confrontation between the Committee and the Ombudsman would serve no one - least of all the citizens of this province. History has proven this to be the case. We should therefore strive together to do our best to ensure that history does not repeat itself by assiduously avoiding a confrontation, if this is possible. It is for that reason and with that purpose in mind, that I am writing you this letter.

I think you would agree that I have demonstrated over the past three years that I am prepared to cooperate with the Committee, within reason. The members of my staff and I have, on occasion, provided information at the Committee's request, which did not strictly fall within the terms of reference of the Committee, as referred by the Legislature. This information was provided, notwithstanding my

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jurisdictional concerns, because I felt that it was in the best interest of this Office and the work of the Committee, that this be done. However, where in my view a request by the Committee, which clearly exceeds its mandate, impinges on the very independence of the Office of the Ontario Ombudsman, the line must be drawn - and it is accordingly here that I have drawn it.

It is my respectful submission to you that the reason for the Committee's dilemma is simply: some Committee members still lack a basic understanding of the mandate of the Select Committee on the Ombudsman, as that mandate relates to the Ombudsman.

The Select Committee on the Ombudsman was created on the motion of the Premier, seconded by the then Leader of the Opposition on July 15, 1976. As your Committee Clerk, Mr. Graham White, noted in his excellent memorandum of June 25, 1981 entitled, "An Outline of the Work of the Select Committee on the Ombudsman", the striking of the Committee was precipitated by my predecessor's presentation of a special report, pursuant to section 22(4) of the Ombudsman Act, to the Assembly respecting the Ministry of Housing's Land Acquisition Program in North Pickering. The seriousness of the matter clearly demanded evaluation and response by the Assembly, yet no vehicle existed for the consideration of the Ombudsman's report and of the Ministry's response. A small committee was the obvious forum for the House to deal with the issue, and generally with Ombudsman reports, both special and annual.

The relevant portion of the precise motion passed by the House on July 15th was as follows:

Ordered, That a Select Committee of this House be appointed to review from time to time the reports of the Ombudsman as they become available, to report thereon to the Legislature, and to make such recommendations as the Committee deems appropriate; reports and recommendations of the Committee to be placed on the order paper for discussion after presentation.

The foregoing constituted the Order of Reference of the Select Committee until December 16, 1976, when on motion by Mr. Welch, seconded by Mr. Renwick, the Assembly passed a further motion extending the mandate of the Committee by authorizing it to formulate general rules for the guidance of the Ombudsman in the exercise of his functions under the Ombudsman Act.

As you know, section 16 of the Ombudsman Act provides as follows:

16(1) The Assembly may make general rules for the guidance of the Ombudsman in the exercise of his functions under this Act.

(2) All rules made under this section shall be deemed to be regulations within the meaning of the Regulations Act.

(3) Subject to this Act and any rules made under this section, the Ombudsman may determine his procedures.

On October 29, 1975, the House had appointed a Select Committee, chaired by Mr. Vernon Singer, "to consider and set out general rules and guidelines for the guidance of the Ombudsman". This Committee reported in December, 1975, and thereupon ceased to exist.

One of the principal recommendations of the 1975 Select Committee was that a permanent Committee of the Legislature be struck to review:

- (a) the reports of the Ombudsman as they become available from time to time;
- (b) the estimates of the Ombudsman; and
- (c) the actions, or lack of action, taken by those persons referred to in the Ombudsman's reports, and report in connection with these matters to the Legislature from time to time.

As you are aware the Legislature did not accede to this recommendation.

The terms of reference of the Select Committee have varied somewhat over the years, but its principal tasks, as they relate to the work of the Ombudsman, have always been to review the reports of the Ombudsman and to formulate general rules for the guidance of the Ombudsman in the exercise of his functions under the Act, and thereafter to report to the Assembly. This letter will not concern itself with the Committee's subsequent term of reference respecting universal political rights.

The rule-formulating mandate of the Select Committee, as entrusted to it by the Legislature, clearly relates only to the exercise by the Ombudsman of his functions under the Act.

Section 15(1) of the Act provides that, "The function of the Ombudsman is to investigate any decision or recommendation made or any act done or omitted in the course of the administration of a governmental organization and affecting any person or body of persons in his or its personal capacity." (Emphasis added.) I am further required by the Act to report the results of my investigations, and to report annually to the Legislature.

The Legislature has made it abundantly clear in section 8 of the Act that, subject to the approval of the Lieutenant Governor in Council, it is for the Ombudsman to "employ such officers and other employees as

the Ombudsman considers necessary for the efficient operation of his office," and for the Ombudsman "to determine their salary and remuneration and terms and conditions of employment" (emphasis added).

The Ombudsman is also empowered to lease premises and acquire equipment. These powers are conferred upon the Ombudsman to assist him in carrying out his functions of investigation and report; by no stretch of the imagination do these powers constitute the Ombudsman's functions under the Act.

The mandate of the Select Committee clearly does not extend to requesting or considering the salaries, staff complement and job descriptions of the members of my staff. The members of the Committee misconceive the mandate of the Committee when they refer to it as "overseeing" the Office of the Ombudsman insofar as the remuneration of my employees is concerned, and that the Committee is "analogous to a management consulting firm brought in by a company to make proposals for improvements". While the Committee does consider the work of the Ombudsman's Office, such consideration is limited to the Order of Reference by the Legislature.

Our Legislature has ensured, by the inclusion of section 8(1) and other procedural safeguards, that the Ombudsman is not only independent of the administrative arm of government but is also free in the day-to-day operation of his Office from interference by the political arm of the Legislature.

I agree wholeheartedly with my predecessor that the principles of impartiality in the future operation of the Office of the Ontario Ombudsman would be threatened if the Select Committee on the Ombudsman were to involve itself in such questions as the remuneration and job descriptions of staff of the Ontario Ombudsman's Office. In order for the Ombudsman to function impartially and independently, he must be free from the control of any body, with the exception of the Legislature, which alone has authority to remove him for cause.

Many of the points which I have made thus far were made by Mr. Maloney in his letter of March 18, 1977 to the first Chairman of the Select Committee, Mr. James Renwick. The letter was written in response to a request by Mr. Renwick to Mr. Maloney for an outline of the reasons for his position that the Select Committee lacked the authority to inquire into a complaint by Patrick Reid, M.P.P. against two members of Mr. Maloney's staff. I share Mr. Maloney's view that had he or any member of his staff participated in a consideration by the Committee of a complaint by a Member of Provincial Parliament against members of his staff, this would have compromised the independence of the Office of the Ontario Ombudsman. The complaint by Mr. Reid had absolutely nothing whatsoever to do with the Ombudsman's functions of investigating and reporting, and as such was beyond the authority of the Committee.

Insofar as the Committee's request for my budgetary submission made to the Board of Internal Economy is concerned, I wish to make the

following points. First, I have already mentioned that the 1975 Select Committee on Guidelines recommended that a permanent committee of the Legislature be struck to review, among other things, the estimates of the Ombudsman. The recommendation respecting estimates was not acted upon by the Assembly. As early as 1977, the Select Committee on the Ombudsman recommended that its Order of Reference "be expanded to provide that it review from time to time the estimates of the Ombudsman as they become available, to report thereon to the Legislature, and to make such recommendations as the Committee deems appropriate". (Second Report, Recommendation #29.) The Assembly likewise failed to implement this recommendation. The Committee renewed this recommendation in its Third Report (Recommendation #41), its Fifth Report (Recommendation #52), and most recently in its Ninth Report (Recommendation #7), which has yet to be discussed in the Legislature,. The Legislature has not seen fit to comply with these recommendations.

As the Committee noted in its last report, on June 19, 1978, the Board of Internal Economy agreed that:

The Chairman of the Ombudsman's Committee be invited to attend meetings of the Board of Internal Economy to observe the preliminary examination by the Board in establishing the Ombudsman's estimates and that these estimates be sent to the House with the recommendation that they be referred to the Ombudsman's Committee for review.

Although the Assembly declined to implement the Board of Internal Economy's recommendation, I understand that an agreement was reached between the Speaker and the Chairman of the Select Committee whereby it was confirmed that, in accepting an invitation by the Board to observe the preliminary examination of the Ombudsman's estimates, the Chairman would be doing so as an observer only, and would be free to discuss his observations with members of the Committee.

As a result, both you and your predecessor, Mr. Lawlor, have been present when the preliminary examination by the Board of Internal Economy has taken place in establishing the Ombudsman's estimates. The present budgetary process for the Office of the Ombudsman provides for the Ombudsman's estimates and supplementary estimates to be considered by the Board of Internal Economy. Unless and until the Order of Reference of the Select Committee is amended to include the authority to consider my Office's estimates, or the Ombudsman Act is so amended, I do not intend to provide the Committee with my budgetary submissions made to the Board of Internal Economy, beyond what appears in printed estimates. Nor do I intend to participate in any discussion by the Select Committee of my budgetary submissions. To do so would be contrary to the wishes of the Assembly, which has declined to this date to give the authority to the Select Committee to consider my estimates and supplementary estimates.

My detailed budgetary submission to the Board of Internal Economy will not assist the Committee in fulfilling either its mandate to

review the reports of the Ombudsman or its reference to formulate general rules for the guidance of the Ombudsman in the exercise of his functions under the Act, and thereafter to report to the Assembly.

The mandate of the Select Committee clearly does not extend to requesting or considering the salaries, staff complement and job descriptions of the members of my staff. Committees cannot institute inquiries beyond their terms of reference. This point has been repeatedly made by Erskine May, Arthur Beauchesne, and most recently by the Ontario Law Reform Commission at page 22 of its Report on Witnesses before Legislative Committees.

In summary then, I do not intend to provide the Committee with the budgetary information which it has requested for the following reasons:

- (1) The request exceeds the Order of Reference set forth by the Assembly;
- (2) The provision of the information will not assist the Committee in carrying out its terms of reference;
- (3) To provide the requested information would be to flout the wishes of the Assembly which has thus far declined to amend the Order of Reference of the Committee to consider my estimates, despite five Committee recommendations to this effect;
- (4) Most important, to provide the requested information without the Legislature having amended the Order of Reference, would be to compromise the independence of the Ombudsman in his day-to-day operation of the Office from interference by the political arm of the Legislature.

I have now had an opportunity to consider Mr. Philip's request, made at the September 7, 1982 afternoon sitting of the Committee, that I table with the Committee the objectives and costs of each trip referred to in my Ninth Report. This letter will also constitute my reply to Mr. Philip's request, through you as Committee Chairman.

Insofar as the objectives are concerned, they have already been addressed in my letter to you of March 10th, 1982 in my Ninth Report, and most recently in my opening statement before the Committee.

I do not intend to table with the Committee the costs related to my trips. I am accountable for the manner in which Office monies are expended - including monies for travel - but not to the Select Committee on the Ombudsman. Section 11 of the Ombudsman Act provides that the accounts and financial transactions of the Office shall be audited annually by the Provincial Auditor. Since my tenure as Ombudsman, the Auditor has not seen fit, in his report to the Legislature, to be critical of monies expended by me for travel, nor have my accounts been referred to the Public Accounts Committee.

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As you know, my estimates invariably include an amount for travel. Since you were present when my 1982/83 estimates were considered on December 14, 1981, you will no doubt recall that, at the meeting of the Board, specific reference was made by me and Board members to my projected trip in January to Fiji for the meeting of the Consultative Committee for the next World Ombudsmen's Conference. You will also recall that my Executive Director, Mr. Frank McArdle, referred in his letter to you of December 4, 1981, in addition to the Fiji meeting, to meetings that had been arranged with Ombudsmen in Hawaii, Australia and New Zealand, following the Fiji gathering. As I explained in my letter of March 10th, 1982 to you, such meetings are invaluable since they enable me to further my knowledge at first hand of the workings of Ombudsman offices around the world, in order that I may apply that knowledge to the better working of the Office of the Ombudsman of Ontario.

Mr. Philip's request for the costs associated with my foreign travel cannot be complied with for the identical reasons that I have outlined above in connection with the Committee's request for my budgetary submission to the Board of Internal Economy.

As I explained in my opening statement before the Committee, I firmly believe that a Select Committee can be a valuable complement to an Ombudsman's office, provided that each works closely with the other, while at the same time respecting their different spheres of responsibility. Although the Committee and the Ombudsman will not always see eye to eye on all matters, there has, at least since the inception of my term of office, existed a mutual respect and the feeling that the overall administration of this province is perhaps a little more sensitive and responsive as a result of the existence of both the Ombudsman and the Select Committee.

I am confident that you will receive the observations and concerns expressed in this letter in the constructive manner in which my comments were intended, and that the results will make for an even improved relationship between your Committee and my Office.

Yours sincerely,



Donald R. Morand

HON. DONALD R. MORAND



The Ombudsman | Ontario

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March 10th, 1982

Mr. Robert Runciman, M.P.P.
Chairman
Select Committee on the Ombudsman
Legislative Building
Toronto, Ontario
M7A 1A2

Dear Mr. Runciman:

I understand that, although a specific date has yet to be set, the Select Committee's Ninth Report on the Ombudsman will shortly be debated in the House. I had hoped to have an opportunity, before the Committee's Report was discussed in the Assembly, to "set the record straight". Since I may not have an opportunity before the Ninth Report is debated, I thought I might write to you as I feel it is important to the proper functioning of my Office that these errors not go unanswered.

Much attention has been focused on my Office and some of that attention arose as a result of actions by members of the Select Committee, some as a result of my own actions and some resulted from actions outside the scope of the Committee or my Office.

I should like to make clear certain facts, to correct certain misinformation, and misinterpretation of figures and omissions and some misconceptions which have arisen as a result of that misinformation.

Since I presume that everyone understands that it is impossible for me to personally deal with every one of the more than 10,000 complaints that come into the Office yearly, then it is my excellent and dedicated staff who have had to bear the brunt of the media report errors and misinformed criticism of the Ombudsman's Office in the past few weeks.

I think perhaps that criticism can be categorized in three ways. First, that there are far too many staff, far more than in any other Ombudsman's Office in any jurisdiction. Secondly, that the staff is made up mainly of lawyers, and third, and perhaps most important, that they take far too long to deal with complaints brought before the Ombudsman's Office.

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Let me deal first with my staff size, which has been compared unfavourably in certain media reports, to those of Ombudsmen in other jurisdictions, such as Denmark, Sweden, Israel and Great Britain.

I do not believe that such comparisons serve the people of Ontario well. In the first place, the staff figures for these jurisdictions were reported incorrectly, and do not take into account the number of complaints received by these offices.

Great Britain's Ombudsman, for example, can act only on complaints from members of Parliament, not directly from private citizens. And with a staff of 88, and not 56 as reported in the press, he received only 1,031 complaints in 1980, whereas my Office dealt with some 10,869 complaints. Were he to receive as many complaints as my Office, he would require a staff of 928 people.

Denmark, in 1979, with a staff of 23 received 1,513 complaints; Sweden, in 1979/80 with a staff of 55 received 3,361 complaints; Israel, in 1979/80, with a staff of 83 received 6,832 complaints.

I would suggest to you that statistics comparing the staff and complaint load of the Ontario Ombudsman's Office with other offices elsewhere are misleading. Numbers alone can be misinterpreted because they fail to recognize that different Ombudsmen have different terms of reference and organizational models.

I should point out further that many Ombudsmen rely on government service departments to handle purchasing, payroll and a great many other administrative functions. In my Office, we handle all of those things ourselves.

As to the allegation that my Office has too many lawyers on staff - I think a phrase I have seen used in the newspapers is "a staff of 122 lawyers, investigators and administrators" - the truth of the matter is there are twelve lawyers on the staff of the Ombudsman, and six of those are there in an advisory capacity, attached to the Legal Directorate. All of my investigators, those people who deal directly with the people of Ontario and their complaints, are not lawyers except two. The other four are in administrative positions: my Executive Director, my Counsel and Special Advisor, my Director of Investigations and an Assistant Director.

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Of this total, 53.6% were closed within a month, 69.5% within three months, and 82% within seven months, which is the figure that most closely parallels the figure of 207 days mentioned in the Select Committee's Report. 85.9% were closed within nine months, and 89.6% within one year. Only about 10% of the complaints took longer than a year to close, and this of course, because some of them are of an extremely complex nature. If we were to calculate the overall duration taken to follow-up and close every complaint that came into the Ombudsman's Office, we would find that the figure would be approximately 120 days.

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I have recently had occasion to review the average length of time taken to close a complaint documented in a file by my Office for the three most recent fiscal years, in light of the observations of the Committee and I quote: "the statistical duration has increased by over 100% within the span of 24 months".

My review has revealed that the average duration for a complaint documented in a file in the fiscal period 1978/79 was 127 days, rather than the 101 days previously reported by my Office, and carried by the Committee in its Report. When I next appear before the Committee, I would be pleased to explain the reason for this discrepancy.

The consequence of the error with respect to the 78/79 fiscal period is that the average duration to closing respecting complaints documented in files has increased by 63% over the two fiscal periods, and not by "over 100%", as reported by the Committee and the media.

The average time taken to close a complaint documented in a file for two succeeding fiscal periods was correctly reported by me, and therefore by the Committee, as 153 days and 207 days respectively.

Further, a review of pages 1 through 3 of the Ombudsman's Eighth Report and the transcript of the proceedings of the Select Committee in September when our statistics were considered will reveal that, contrary to the Committee's assertion at page 22, our Office never attributed administrative changes vis-a-vis file openings and closings as a full explanation for the increase in file duration over the last two fiscal periods. Rather, specific reference was also made to the expansion of administrative fairness procedures and a "push" on more complicated and older jurisdictional complaints which required more than 6 months to complete.

By any standard, the fiscal year 1980/81 was a banner year, statistically, for the Office of the Ontario Ombudsman. A total of 6,182 complaints documented in files were closed, which represented an increase of 743 complaints when compared with the previous fiscal year. The number of files remaining open in the Office was reduced from 2,714 for the previous fiscal year to 1,634 - a very substantial drop of 40% or 1,080 files.

Having regard to the extremely complex and time-consuming nature of some of these complaints, I think I have a right to be proud of the speed and consideration with which my staff has protected the rights of Ontario citizens, and the people of Ontario may have confidence that a complaint to the Ombudsman will continue to be handled with speed and consideration.

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My Office's investigation of a student award complaint has also attracted press criticism due to an interview with Mr. David Cooke, M.P.P. with the newspapers. He first contacted my Office about the Student Awards Branch computer programming error which had led to an overpayment being recollected, in a letter dated August 27th, 1980. Mr. Cooke asked me to look into the whole matter, as well as the specific case of one of his constituents. On September 5th, 1980, my Co-Ordinator of Researcher told him that, although we did not have the authority to require the Ministry of Government Services to suspend collection, in the past it had been co-operative, and we would request that they hold off collections in this case. On September 9th, my Co-Ordinator spoke to the Manager of Central Collections of Government Services to make this request. The Manager said that it might be possible to authorize a temporary suspension of collection, but that he would need authority from the Ministry of Colleges and Universities for anything longer.

On September 19th, 1980 notices of intent to investigate were sent to the Minister of Colleges and Universities asking her to consider instructing the Ministry of Government Services to postpone collections, on the understanding that we would attempt to complete the investigation within three months. On October 15th, the Minister delivered her response by hand, pointing out that the constituent's reassessment had not been caused by a computer error. Rather, in his Student Loan application the student had underestimated his parents' income, and Dr. Stephenson said she could not direct that collections be postponed because of the administrative difficulties this would cause Central Collections.

Mr. Cooke was sent a copy of this letter on October 20th and on November 3rd, he replied, saying that even if his constituent overpayment was not caused by a computer error, we should still examine the case to see if quicker procedures could be worked out. On November 27th, 1980, the file was assigned for investigation. On December 15th, 1980, the investigator contacted Mr. Cooke, explaining that we were investigating the computer error cases. The investigator said we could also investigate his constituent's case, but we would need to contact him for further information. She also told Mr. Cooke that if his constituent did not want us to investigate, we would then close our file. After several phone calls, the investigator was able to reach the complainant on December 19th, 1980. He did not feel that our investigation could help him, since what he wanted was immediate suspension of collection until the following April, when he would be out of school, and the investigator offered to contact Central Collections informally to see if it would agree to this. While they did not agree, they did offer to talk to the complainant. Our investigator reached him again by telephone on December 22nd, and invited him to contact Central Collections direct. He stated that he would do so when

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he returned from his vacation in January. He restated his wish to withdraw the complaint and thanked the investigator for her efforts. The Ministry of Colleges and Universities, Mr. Cooke and the complainant were all informed in writing that the complaint had been withdrawn. As you can see in this case, it was four months from the time that Mr. Cooke first wrote to me until the time his constituent confirmed his wish to withdraw his complaint.

Meanwhile, in October 1980, another complainant, who was a computer error case, contacted us on her own initiative objecting to being required to repay her grant overpayment, and contending that the repayment schedule which had been requested by Central Collections was unreasonable. She also questioned the legality of the Ministry of Colleges and Universities' decision to recover the overpayment.

I can obviously go through a complete list of actions taken by my Office, both in the fact-finding portion of the investigation, in the obtaining of a lengthy legal opinion concerning the Ministry's legal entitlement to recover grant overpayments, and the final review by the Ombudsman and the issuing of a report. Incidentally, Mr. Cooke was kept informed at all stages as to what was happening.

Further, our complainant made no payments on her grant overpayment until after our investigation was completed. Even if she had repaid part of the amount owing, this would not have prevented me from recommending that the amount be forgiven, had I thought it appropriate to do so. Therefore the length of time taken to resolve this complaint had no bearing upon the eventual outcome.

My final report, finding the complaint to be unsupported, was issued to the complainant, Mr. Cooke and the Ministries of Colleges and Universities, and Government Services on August 27th, 1980. Thus, the handling of this complainant's case took approximately eleven months, and not the year and a half referred to in press reports.

The Globe & Mail account of how I dealt with the cases of 135 injured workers complaining about their Workmen's Compensation disability awards is also, in part, incorrect. As you know, the Committee did not recommend that the Ombudsman ask the Cabinet to refer the legal issue to the Courts, but made this recommendation itself. Further, my Office voluntarily undertook before the Committee, and as such prior to the Committee's Ninth Report, to investigate anew the 135 cases to determine if anyone had been dealt with unfairly, even within the Workmen's Compensation Board's interpretation of the law.

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Some media reports have suggested that I may be too conservative and too quiet. It has been said that, as compared to my predecessor, I am rather a low-key Ombudsman. Certainly my style is to attempt to get things done by nibbling away behind the scenes if I feel I can successfully resolve a complaint, rather than biting for all to see. However, as you well know from the Committee's consideration of recommendation denied cases, I am prepared, if necessary, to go to bat all the way for a complainant, whose grievance I have found to be supported after investigation.

As for being too quiet, my Office continues to take steps to ensure that the concept of the Ombudsman's Office and its services to the people of Ontario are made known. This is done through the circulation of our excellent film and brochures, by holding of hearings throughout the Province where complaints may be lodged, by the acceptance of speaking engagements on every possible occasion by myself and members of my staff, in the participation in TV and radio interviews, and interviews with members of the press, and finally in the initiation this month of a radio advertising campaign in major centres throughout Ontario. This campaign is designed to remind the people of Ontario of the services of the Ombudsman's Office, and as the advertisement itself says, the fact that the Ombudsman is here to help them.

The Globe & Mail article referred to earlier, quoted Mr. Shymko as saying that it was inexcusable that the Ombudsman is not listed under O in the white pages of telephone books. I happen to agree with Mr. Shymko since I did, in fact, request that our telephone number be so listed. I have attached a copy of a letter sent to me by Allan Gordon, Deputy Minister of Government Services wherein he apologizes on behalf of Bell Canada and the Ministry of Government Services for the inconvenience which has been caused to the public by the omission from the white page listings, and the listing in the Services section of the blue pages.

Some of the media accounts have implied that my travelling abroad might be considered prejudicial to the operations of the Ombudsman's Office here at home. David Cooke, M.P.P. appears to raise this as an issue in his letter to you of January 8th, 1982, wherein he writes that "to think that from late fall 1981 to early spring 1982 Mr. Morand will have travelled on three occasions to three distant countries..." This is simply untrue, and it is unfortunate that Mr. Cooke failed to query me about my travels, since this misinformation subsequently appeared in several newspapers across Canada and Ontario and especially in copies of the Windsor Star, the Toronto Star, and the Globe & Mail, to each of whom he did send a copy. I would like to set the record straight on my travels as well. I have travelled on only one occasion since the fall of 1981 to "a distant country", and that was in

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January of this year to a meeting in Fiji of the Consultative Committee planning the next International Ombudsman's Conference.

The concept of an Ombudsman's Office is a relatively new one in Ontario. As you know, the Office itself has been in operation for less than seven years. Both my predecessor and I have striven to make this Office into what I believe is the best and most efficient Ombudsman's Office in the world. The Committee in its Ninth Report indicates that it shares my view that the Ontario Ombudsman's Office is "first class".

However, in order to ensure that our Office is second to none, it is important that we study, and continue to study, ways in which the Office may be made more efficient, more caring, and more serving of the needs of the people of Ontario.

At the second International Ombudsman's Conference held in October, 1980 in Jerusalem, I was honoured to be elected by Ombudsmen from all around the world, a member of the Consultative Committee for the next conference, which takes place every four years.

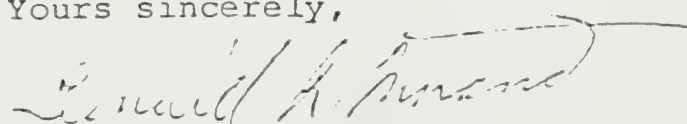
On my way to the Jerusalem Conference I visited a number of Ombudsmen and complaint handling offices. Following the meeting of the Consultative Committee in January of this year in Fiji, I visited Ombudsman offices in Hawaii, Australia and New Zealand.

Your predecessor as Chairman of the Committee, Mr. Patrick Lawlor encouraged me to visit other Ombudsmen and similar complaint handling offices to provide me with a more informed analysis of how my Office could better serve the people of Ontario.

Contrary to the media reports, I do not travel to "spread the Ombudsman concept" but rather to further my knowledge at first hand of the workings of Ombudsmen offices around the world and to apply that knowledge to the better working of the Office of the Ombudsman of Ontario.

I apologize for the length of this letter but, needless to say, my setting the record straight has required me to reply in detail to the inaccuracies, misinterpretation of figures, omissions and implications in some of the recent media reports. If I can be of any further assistance, please do not hesitate to contact me.

Yours sincerely,



Donald R. Morand

DRM/mal
enclosure

An Act to amend
The Ombudsman Act, 1975

HER MAJESTY, by and with the advice and consent of the Legislative Assembly of the Province of Ontario, enacts as follows:

1. Clause a of section 1 of The Ombudsman Act, 1975, being chapter 42, is amended by adding at the end thereof "and without limiting the generality of the foregoing, includes a governmental organization set out in the Schedule."
2. Subsection 1 of section 6 of the said Act is repealed and the following substituted therefor:
 - (1) The Ombudsman shall be paid a salary in an amount at least equal to the salary that may be paid from time to time to a Supreme Court Judge.
3. Section 9 of the said Act is amended by inserting after "equipment" in the second line ", services."
4. The said Act is amended by adding thereto the following section:
 - 9a (1) When, because the Legislature is adjourned, prorogued or dissolved or because the urgency of other public business prevents the Legislature from considering estimates or supplementary estimates, monies are urgently required for the purposes of this Act before they have been appropriated, the Treasurer of Ontario may, subject to the approval of the Lieutenant Governor in Council, advance the required monies for the use of the Ombudsman upon the written request of the Board of Internal Economy.
 - (2) All monies advanced by the Treasurer of Ontario under subsection 1 shall be deemed to be an interest free loan repayable from monies to be appropriated by the Legislature for the purposes of this Act.

5. Section 12 of the said Act is repealed and the following substituted therefor:

12.-(1) The Ombudsman shall report annually upon the affairs of his office to the Speaker of the Assembly who shall cause the report to be laid before the Assembly if it is in session or, if not, at the next ensuing session.

(2) The Ombudsman, where he considers it to be in the public interest or in the interest of any person or governmental organization, may make a special report to the Assembly or comment publicly respecting any matter relating generally to the exercise of his duties under this Act, or to a particular complaint investigated or under investigation by him.

6. Section 13 of the said Act is repealed and the following substituted therefor:

13.-(1) Before commencing the duties of his office, the Ombudsman shall take an oath, to be administered by the Speaker of the Assembly, that he will faithfully and impartially exercise the functions of his office and that he will not, subject to this Act, disclose any information received by him as Ombudsman.

(2) Before commencing his duties, every officer or employee of the Ombudsman shall take an oath, to be administered by the Ombudsman, that he will not, subject to this Act, disclose any information received by him as an officer or employee of the Ombudsman.

(3) The Ombudsman and his officers and employees shall, subject to this Act, maintain confidentiality in respect of all information that comes to their knowledge in the performance of their duties under this Act.

(4) The Ombudsman may disclose or authorize any of his officers or employees to disclose any information that is necessary to,

- (a) further an investigation;
- (b) prosecute an offence under this Act; or
- (c) establish grounds for his conclusions and recommendations made in a report under this Act.

(5) The failure of an officer or employee of the Ombudsman to adhere to the oath required by subsection 2 of this section, or to maintain confidentiality as required by subsection 3 of this section, may be considered cause for dismissal.

7. Clause b of section 14 of the said Act is amended by inserting after "to" in the first line "decisions,".
8. Clause a of subsection 4 of section 15 of the said Act is amended by adding at the end of the clause "", unless to require that the right be exercised or the time to expire would, in the Ombudsman's opinion be unreasonable, having regard to all the circumstances."
9. Subsection 5 of section 15 of the said Act is repealed and the following substituted therefor:
 - 15.(5) If any question arises
 - (a) whether the Ombudsman has jurisdiction to investigate any case or class of cases under this Act; or
 - (b) in connection with the exercise by the Ombudsman of any of his powers or duties under this Act,he may, if he thinks fit, apply to the Supreme Court for a declaratory order determining the question.
10. Subsection 2 of section 17 of the said Act is repealed and the following substituted therefor:

(2) Notwithstanding any provision in any Act, where a communication written by or on behalf of a person confined in a provincial correctional institution or training school, or a patient in a provincial psychiatric facility is addressed to the Ombudsman, it shall be immediately forwarded, unopened, to the Ombudsman by the person in charge of the institution, training school or facility; and a communication from the Ombudsman to such a person shall be forwarded to that person in a like manner.

11. Section 18 of the said Act is repealed and the following substituted therefor:

18.-(1) Without limiting the generality of the powers conferred on the Ombudsman by this Act, if before or during the investigation of any complaint within his jurisdiction, it appears to the Ombudsman that,

- (a) under the law or existing administrative practice there is an adequate remedy for the complainant, whether or not he has availed himself of it;
- (b) the complaint relates to a decision, recommendation, act or omission of which the complainant has had knowledge for more than twelve months before the complaint is received by the Ombudsman;
- (c) the subject-matter of the complaint is trivial;
- (d) the complaint is frivolous or vexatious or is not made in good faith;
- (e) the complainant has not a sufficient personal interest in the subject-matter of the complaint; or
- (f) having regard to all the circumstances of the case, any investigation or further investigation is unnecessary,

he may in his discretion refuse to investigate or further investigate the matter.

(2) In any case where the Ombudsman decides not to investigate or further investigate a complaint he shall inform the complainant in writing of that decision, and may if he thinks fit state his reasons therefor.

12. Section 19 of the said Act is repealed and the following substituted therefor:

19.-(1) Before investigating any matter, the Ombudsman shall inform the head of the governmental organization affected of his intention to make the investigation.

(2) Every investigation by the Ombudsman under this Act shall be conducted in private, unless the Ombudsman considers that there are special circumstances in which public knowledge is essential in order to further the investigation.

(3) Subject to subsection 4, the Ombudsman may hear or obtain information from such persons as he thinks fit, and may make such inquiries as he thinks fit in such manner as he considers appropriate, and it is not necessary for the Ombudsman to hold any hearing and no person is entitled as of right to be heard by the Ombudsman.

(4) If at any time during the course of an investigation, it appears to the Ombudsman that there may be sufficient grounds for his making any report or recommendation that may adversely affect any governmental organization or person, he shall inform the governmental organization or person of the grounds and possible conclusions and recommendations, and shall give the governmental organization or person an opportunity to make representations, either personally or by counsel, before reporting the result of the investigation.

(5) The Ombudsman may in his discretion, at any time before, during or after any investigation, consult with any person concerned in the matter of the complaint or investigation to attempt to assist in the resolution of a complaint.

(6) On the request of any minister in relation to any investigation, or in any case where any investigation relates to any recommendation made to a minister, the Ombudsman shall consult that minister after making the investigation and before forming a final opinion on any of the matters referred to in subsection 1 or 2 of section 22.

(7) Notwithstanding section 13, if, during or after an investigation, the Ombudsman is of the opinion that there is evidence of a breach of duty or of misconduct on the part of any officer or employee of any governmental organization, he may refer the matter to the appropriate authority.

13. Subsection 1 of section 20 of the said Act is amended by striking out "or under the" in the eighth line and inserting in lieu thereof "custody or."
14. Section 20 of the said Act is amended by adding thereto the following subsections:

(2a) The Ombudsman may require any person summoned under subsection 2 to produce any document or thing which in the Ombudsman's opinion relates to any matter described in subsection 1, and which may be in the possession, custody or control of that person.

(2b) If any person,

- (a) on being duly summoned before the Ombudsman makes default in attending;
- (b) being in attendance refuses to take an oath legally required by the Ombudsman to be taken, or to produce any document or thing in his possession, custody or control legally required by the Ombudsman to be produced by him, or to answer any question to which the Ombudsman may legally require an answer;
- (c) does any other thing that would, if the Ombudsman had been a court of law having power to commit for contempt, have been in contempt of that court,

the Ombudsman may certify the offence of that person under his hand to the High Court, and the court may thereupon inquire into the alleged offence and after hearing any witnesses who may be produced against or on behalf of the person charged with the offence, and after hearing any statement that may be offered in defense, punish or take steps for the punishment of that person in like manner as if he had been guilty of contempt of the court.

15. Section 22 of the said Act is repealed and the following substituted therefor:

22.-(1) This section applies in every case where, after making an investigation under this Act, the Ombudsman is of the opinion that,

(a) the decision, recommendation, act or omission which was the subject-matter of the investigation,

(i) appears to have been contrary to law;

(ii) was unreasonable, unjust, oppressive, or improperly discriminatory, or was in accordance with a rule of law or a provision of any Act or a practice that is or may be unreasonable, unjust, oppressive, or improperly discriminatory;

(iii) was based wholly or partly on a mistake of law or fact; or

(iv) was wrong;

(b) in the making of the decision or recommendation, or in the doing or omission of the act a discretionary power has been exercised,

(i) for an improper purpose; or

(ii) on the taking into account of irrelevant considerations;

(c) in the case of a decision made in the exercise of any discretionary power, reasons should have been given for the decision.

(2) If in any case to which this section applies the Ombudsman is of the opinion,

(a) that the matter should be referred to the appropriate authority for further consideration;

(b) that the omission should be rectified;

(c) that the decision or recommendation should be cancelled or varied;

(d) that any practice on which the decision, recommendation, act or omission was based should be altered;

- (e) that any law on which the decision, recommendation, act or omission was based should be reconsidered;
- (f) that the reasons should be given for the decision or recommendation; or
- (g) that any other steps should be taken,

the Ombudsman shall report his opinion, and his reasons therefor, to the appropriate governmental organization, and may make such recommendations as he thinks fit and he may request the governmental organization to notify him, within a specified time, of the steps, if any, that it proposes to take to give effect to his recommendations and the Ombudsman shall also send a copy of his report and recommendations to the minister concerned.

(3) If within a reasonable time after the report is made no action is taken which seems to the Ombudsman to be adequate and appropriate, the Ombudsman, in his discretion, after considering the comments, if any, made by or on behalf of any governmental organization affected, may send a copy of the report and recommendations to the Premier, and may thereafter make such report to the Assembly on the matter as he thinks fit.

(4) The Ombudsman shall attach to every report sent or made under subsection 3 a copy of any comments made by or on behalf of the governmental organization affected.

- 16. Subsection 2 of section 23 of the said Act is amended by inserting after "complainant" in the second line "", the appropriate governmental organization and any person given an opportunity to make representations pursuant to subsection 4 of section 19."
- 17. Subsection 2 of section 25 of the said Act is amended by inserting after "exercise" in the fourth line "or intended exercise."
- 18. The said Act is amended by adding thereto the following section:

29a. The Lieutenant Governor in Council may by order add governmental organizations to the Schedule.

19. This Act comes into force on the day it receives Royal Assent.
20. The short title of this Act is The Ombudsman Amendment Act, 1981.

S C H E D U L E

Governmental Organizations

(to be settled)

**Claims Adjudication Branch
Procedure Manual**

SCHEDULE 4

| Document no. | | | Page no. |
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| 33 | 20 | 02 | 01 |
| ion | | | Subject |
| PERMANENT DISABILITY | | | TEMPORARY SUPPLEMENTARY AWARDS |

REFERENCES:

Section 42(5) of the Act.
Board Policies and Administrative Directives,
Claims Services Division - Pages 79 to 81.

POLICY:

A temporary supplement may be granted to an injured employee in receipt of a permanent disability award, provided the following conditions exist:

1. The impairment of earning capacity of the employee is significantly greater than is usual for the nature and degree of his injury.
2. The injured employee must co-operate in and be available for a medical or vocational rehabilitation programme which would in the opinion of the Board aid in getting him back to work, or accept or be available for employment which is available and which in the opinion of the Board is suitable for his capabilities.
3. The injured employee is incapable for a foreseeable time of following his regular occupation with earnings comparable to his pre-accident income.
4. The injured employee is incapable of following other employment suitable to his condition which would provide income comparable to pre-accident income.
5. The incapacity suffered by the injured employee is due in whole or in part to the compensable disability.

GENERAL INFORMATION:

1. It is the responsibility of the Pensions Adjudicator to determine entitlement to a temporary supplement.
2. Such awards are paid monthly, in addition to the clinical pension award.

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| MAJOR CHANGE April 25, 1980 | Supersedes December 12, 1979 |
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3. A supplement is usually granted for 3, 6, 9 or 12 months depending on the injured employee's employment status.
 4. Supplements can be reviewed at any time and if the injured employee's circumstances change for the better or he fails to co-operate, the supplement may be cancelled immediately. The Pensions Adjudicator will advise the employee in writing of the decision.
 5. Expiring temporary supplementary awards are reviewed by the Pension Adjudicator, one month prior to expiry date and on expiry date. Transcripts from the ENCOPS System are produced to refer the file to Desk 1449 for action.
 6. Pension Adjudicators take the following factors into account when considering a supplement:
 - a) Age
 - b) Pre-accident occupation
 - c) Years of service
 - d) Education
 - e) Locality
 - f) "Other Income", Considered to be:
Unemployment Insurance Benefits,
Supplementary Unemployment Benefits,
Canada Disability Pension Benefits,
Early Retirement Pension, Long Term
Disability Pension, Socio-Economic
Factors etc.
 - g) The employee's availability for work.
- NOTE: The application for a pension under CPP (Canada Pension Plan) by an injured employee will not adversely affect consideration for payment of a supplement under Section 42(5), providing the employee signifies to the Board's Rehabilitation Counsellor that he is available for employment and will co-operate with the Vocational Rehabilitation Division.
7. The following additional circumstances may warrant cancellation of the supplement:
 - a) Restoration of compensation benefits in the claim.
 - b) The employee suffers a further accident and files a subsequent claim.
 - c) The employee changes jobs.
 - d) The employee moves out of the Province.
 - e) The employee returns to work or fails to co-operate in a Medical or Vocational Rehabilitation Programme.

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| PERMANENT DISABILITY | Subject TEMPORARY SUPPLEMENTARY AWARDS |
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f) Retires from the labour market.

NOTE: Benefits under Section 42(5) do not usually apply if the employee receives a lump sum award for psychiatric disability.

CIRCUMSTANCES WHERE A SUPPLEMENT MAY BE PAYABLE

1. The injured employee may be entitled to a temporary supplement if,
 - a) at the time of pension review, the employee's combined income from earnings and monthly pension is less than his pre-accident earnings,
 - OR
 - b) where the minimum permanent disability basis was used to calculate the monthly pension, if his income is less than the minimum permanent disability basis.
2. An injured employee over 65 years of age, may be entitled to a supplement, if it is established that he would have continued at work past age 65 or after retirement would have sought work.
3. Employees approaching 65 years of age, who will not likely ever obtain suitable employment due to various socio-economic factors may be granted a supplement for an appropriate period of time, usually up to age 65.
4. The Pensions Adjudicator is responsible for determining entitlement to the continuation of a Section 42(5) supplement, in cases where the employee requests or takes a vacation. The same criteria as is used for Section 41(1)(b) cases is utilized. (See PAYMENTS: VACATION WHILE DISABLED, Document Number 33 19 18).

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5. A supplement may be considered for employees living outside Ontario, in Canada, only if adequate Vocational Rehabilitation Services are available.
6. An injured employee who is self-employed at the time of the accident or becomes self-employed after the onset of disability, may be entitled to a supplement for a limited period of time.
7. If a pension under C.P.P. is granted, then a supplement is usually not payable as the injured employee has declared himself to be incapable of seeking gainful employment. However, a supplement may be paid, if the employee makes himself available for employment and co-operates with the Vocational Rehabilitation Division. If a supplement is paid, regard is had to any income from the Canada Pension Plan.

PROCEDURE:

1. The Claims Adjudicator should refer all requests for a temporary/special supplement to the Pensions Section.
2. If a temporary supplement is granted, the Pension Adjudicator should flag the Warning Section of the claim jacket.
3. The Claims Adjudicator should inform the Pensions Adjudicator of any changes in employee's circumstances. See General Information, point #7, above.
4. Even if a supplement has been cancelled, the Claims Adjudicator should watch to see that those circumstances are not later altered, thus making the employee eligible again to receive a supplement.
5. As soon as the computer generated transcript is received in the claim, the Claims Adjudicator should refer the file to the Pensions Section, Desk 1449.
6. a) An injured employee who receives temporary total benefits, less monthly pension, as a result of a recurring disability, must be considered for a temporary supplement when benefits are closed, if he is still unemployed.

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- b) The Claims Adjudicator closes temporary benefits, reverts payment to the monthly pension only and then refers the claim to the Pensions Adjudicator to consider entitlement to a supplement under Section 42(5). The Pensions Adjudicator will advise the injured employee of the decision, in writing.

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SECTION 42-(5)

Directive 1.

Temporary Supplementary Awards

Pre-Requisites

- (1) The impairment of earning capacity of the employee is significantly greater than is usual for the nature and degree of his injury.
- (2) The injured employee must co-operate in and be available for a medical or vocational rehabilitation programme which would in the opinion of the Board aid in getting him back to work, or accept or be available for employment which is available and which in the opinion of the Board is suitable for his capabilities.
- (3) The injured employee is incapable for a foreseeable time of following his regular occupation with earnings comparable to pre-accident income.
- (4) The injured employee is incapable of following other employment suitable to his condition which would provide income comparable to pre-accident income.
- (5) The incapacity suffered by the injured employee is due in whole or in part to the compensable disability.

General

SUBJECT TO THESE PRE-REQUISITES, THE PENSIONS ADJUDICATOR SHALL CONSIDER THE FOLLOWING POINTS IN MAKING HIS DECISION:

- (1) He should ensure the case has been referred to the Vocational Rehabilitation Branch to consider rehabilitation.
- (2) After the clinical and temporary supplement awards have been made, the Pensions Adjudicator will send a memo to the Vocational Rehabilitation Branch outlining the amounts the employee will be receiving and asking that assistance be continued in those cases currently active in Vocational Rehabilitation Services.
- (3) The temporary supplementary award will be reviewed at the end of three months by requesting a report from the Rehabilitation Counsellor and, if necessary, asking that assistance be accelerated.

SECTION 42-(5)

(4) At the end of the six-month period, the supplement will be discontinued or reduced unless circumstances indicate that continuation of the supplement will assist in successful rehabilitation.

(5) In cases of employees who will not likely ever obtain suitable employment, regard will be had for income from other sources such as C.P.P., etc. and where this income plus the clinical award equals or exceeds T.T., no temporary supplement will be paid. If total income is less than T.T., a supplement can be considered up to the equivalent of T.T. for an appropriate period of time up to three years and then review to determine if continuation of the supplement is warranted,

(6) Since a temporary supplementary award relates to earnings, it should not continue beyond normal working life. The Pensions Adjudicator should consider carefully the case of the employee over 65 years of age, and may decide in his favour if it is established that he would likely have continued at work past age 65, or sought other work after retirement from his normal occupation.

(7) Where an injured employee is not entitled to a supplement at time of rating, then any extension of T.T. which he is receiving at that time will continue for one month and the clinical award will then be implemented. The injured employee will be informed of this at the time of the Pensions interview.

(8) If an injured employee is currently in receipt of a pension and is laid off due to lack of work and requests rehabilitation assistance, he is generally not eligible for a temporary supplement as he usually receives other assistance such as U.I.C. benefits. Regard may be had for income from any other source.

(9) A supplementary award may be considered for employees living outside Ontario, providing approved Vocational Rehabilitation services can be provided or his residence outside Ontario does not prejudice his socio-economic situation.

(10) The Pensions Adjudicator may consider a supplementary award for persons self-employed at the time of the accident. He may also consider a supplementary award for former employees, self-employed after acquiring the disability. The latter requires very careful scrutiny.

SECTION 42-(5)

(11) Unscheduled review of a temporary supplementary award is in order wherever warranted by the particular circumstances of the case.

(12) Any unusual cases which do not meet the general criteria will be dealt with equitably and fairly having regard to the provisions of Section 42(5).

(13) When a temporary supplementary award is made the employee is to be informed by letter of the amount of the award, the period for which the award is payable and the date of future review. This advice will also instruct the employee to continue co-operating with the Vocational Rehabilitation Branch and to inform the Board immediately when he returns to work. In cases where the employee is working with a wage loss he will be asked to notify the Board of any wage increase he receives.

January 13/76
4500-#7

Directive 2. (1) The present policy of comparing an injured person's current earnings with his earnings prior to the accident in determining a wage loss, when considering a supplement under Section 42(5) be continued.

(2) Section 42(5) be appropriately amended to include a reference to pre-accident earnings in determining a wage loss to reinforce the meaning of the Section. The exact wording is to be developed.

October 19/76
4578-#6 Bd.M.

Directive 3. Application of Revalorization Under Section 42(8), (8a), and (8b) to Supplementary Awards Made Under Section 42(5)

(1) The escalation clauses be applied to supplementary awards made under Section 42(5) in current and future claims, and

(2) Claims in which the escalation clauses were not applied to the supplements be adjusted from a review of the records where available, or on request.

October 19/76
4578-#5 Bd.M.

SECTION 42-(5)

Directive 4. Canada Pension Plan Benefits

The Act is quite specific in that the injured employee must be available for employment or available for a medical or vocational rehabilitation programme to qualify for a supplement under Section 42(5) in addition to a permanent disability award.

The application for a pension under C.P.P. by an injured employee will not adversely affect consideration for payment of a supplement under Section 42(5) providing the employee signifies to the Board's Rehabilitation Counsellor that he is available for employment and will co-operate with the Vocational Rehabilitation Division.

If a pension is granted under C.P.P. the employee is then considered to be "not available for employment" since such pension is awarded on the basis that the applicant is incapable of following any gainful occupation. At this point, benefits under Section 42(5) will be adversely affected.

Benefits cannot be granted under Section 42(5) if the injured employee advises the Rehabilitation Counsellor that he is in effect not available for employment. The fact that he may apply for C.P.P. benefits is merely coincidental and the decision is made on the availability of the employee for employment or a vocational rehabilitation programme as required by the Act.

After a period of time, the employee may recover to the point where he is again available for employment and approaches the Vocational Rehabilitation Division for assistance. If the Vocational Rehabilitation Division reinstates rehabilitation services the Rehabilitation Counsellor will refer the claim to the Claims Adjudication Branch for consideration of a supplement under Section 42(5) which will be granted if the usual requirements are met. The Rehabilitation Counsellor will advise the employee to inform the C.P.P. that he is now actively seeking employment and is receiving a supplement under Section 42(5). The change in practice concerning Section 42(5) applies to claims processed, reviewed, reconsidered or reopened on and after January 23rd, 1980.

C.A.D.
January 22nd, 1980

January 25th, 1980.

SCHEDULE 6

SUMMARY OF RECOMMENDATION

1. FOR THE REASONS AS SET ON PAGES 1 AND 2 OF THIS REPORT THE COMMITTEE RECOMMENDS THAT ALL REPORTS TABLED BY IT IN THE LEGISLATURE WHICH CONTAIN RECOMMENDATIONS FOR THE ADOPTION OF OMBUDSMAN RECOMMENDATIONS BE DEBATED WITHIN EIGHT SESSIONAL WEEKS. (Page 8)
2. ACCORDINGLY IT RECOMMENDS THAT THE REMAINING NINE CASES BE COMPLETED AS QUICKLY AS POSSIBLE AND THAT THE OMBUDSMAN REPORT TO THE LEGISLATURE ON THE DISPOSITION OF EACH. (Page 16)
3. THE COMMITTEE RECOMMENDS THAT IN THE EVENT THAT THE OMBUDSMAN IS ABLE TO REACH A SATISFACTORY RESOLUTION OF ALL OUTSTANDING NORTH PICKERING MATTERS, OR IF HE CONCLUDES THAT THE RESPONSES OF THE MINISTER TO ANY OF HIS RECOMMENDATIONS ARE NEITHER ADEQUATE OR APPROPRIATE, THEN HE SHOULD REPORT TO THE LEGISLATURE ON THE THE NORTH PICKERING MATTERS BEFORE THE END OF JUNE, 1983. (Page 17)
4. ACCORDINGLY, THE COMMITTEE RECOMMENDS THAT THE ATTORNEY GENERAL TABLE, DURING THE 32ND PARLIAMENT OF THIS LEGISLATURE A BILL AMENDING OR OTHERWISE DEALING WITH THE OMBUDSMAN ACT HAVING REGARD FOR THE MATTERS CONTAINED IN THE DRAFT BILL AND POLICY SUBMISSION PROVIDED BY THE OMBUDSMAN IN JANUARY, 1981. (Page 18)
5. ACCORDINGLY, THE COMMITTEE RECOMMENDS THAT THE WORKERS' COMPENSATION BOARD RECONVENE A HEARING ON THIS MATTER AND CONSIDER THE EVIDENCE OF THE COMPLAINANT'S FAMILY PHYSICIAN AND THE PSYCHIATRIST RETAINED BY THE OMBUDSMAN FIRST HAND AND THEREAFTER DECIDE WHETHER THE POLICY OF BENEFIT OF THE DOUBT SHOULD BE APPLIED. (Page 28)

6. ACCORDINGLY, THE COMMITTEE RECOMMENDS THAT THE LIQUOR CONTROL BOARD OF ONTARIO UNDERTAKE SUCH A STUDY AND REVIEW AND REPORT TO IT AS SOON AS POSSIBLE ON THE NEED FOR SUCH AN OUTLET. IN

UNDERTAKING THIS INVESTIGATION THE BOARD SHOULD HAVE REGARD FOR THE CRITERIA DISCUSSED WITH THE COMMITTEE ON SEPTEMBER 8, 1982.
(Page 31)

7. ACCORDINGLY THE COMMITTEE RECOMMENDS THAT THE MINISTRY OF HEALTH PAY THAT PORTION OF THE CLAIMS OF COMPLAINANTS CONTAINED IN CASE SUMMARIES 9 AND 10 WHICH WOULD HAVE BEEN AN INSURED BENEFIT HAD THE OPERATION BEEN PERFORMED BY AN PHYSICIAN. THE COMMITTEE FURTHER RECOMMENDS THAT SECTION 43 OF REGULATION 323/72 OF THE HEALTH INSURANCE ACT, 1972 BE AMENDED TO PERMIT THE GENERAL MANAGER TO DETERMINE THE AMOUNT OF PAYMENT FOR EXCEPTIONAL CASES WHERE MEDICAL PROCEDURES ARE PERFORMED BY PERSONS IN POSSESSION OF THE NECESSARY HOSPITAL PRIVILEGES WHO ARE NOT PHYSICIANS. THE COMMITTEE INTENDS THAT THESE RECOMMENDATIONS APPLY ONLY TO MEMBERS OF THE ROYAL COLLEGE OF DENTAL SURGEONS WHO HAVE OBTAINED THE NECESSARY HOSPITAL PRIVILEGES. (Page 34)

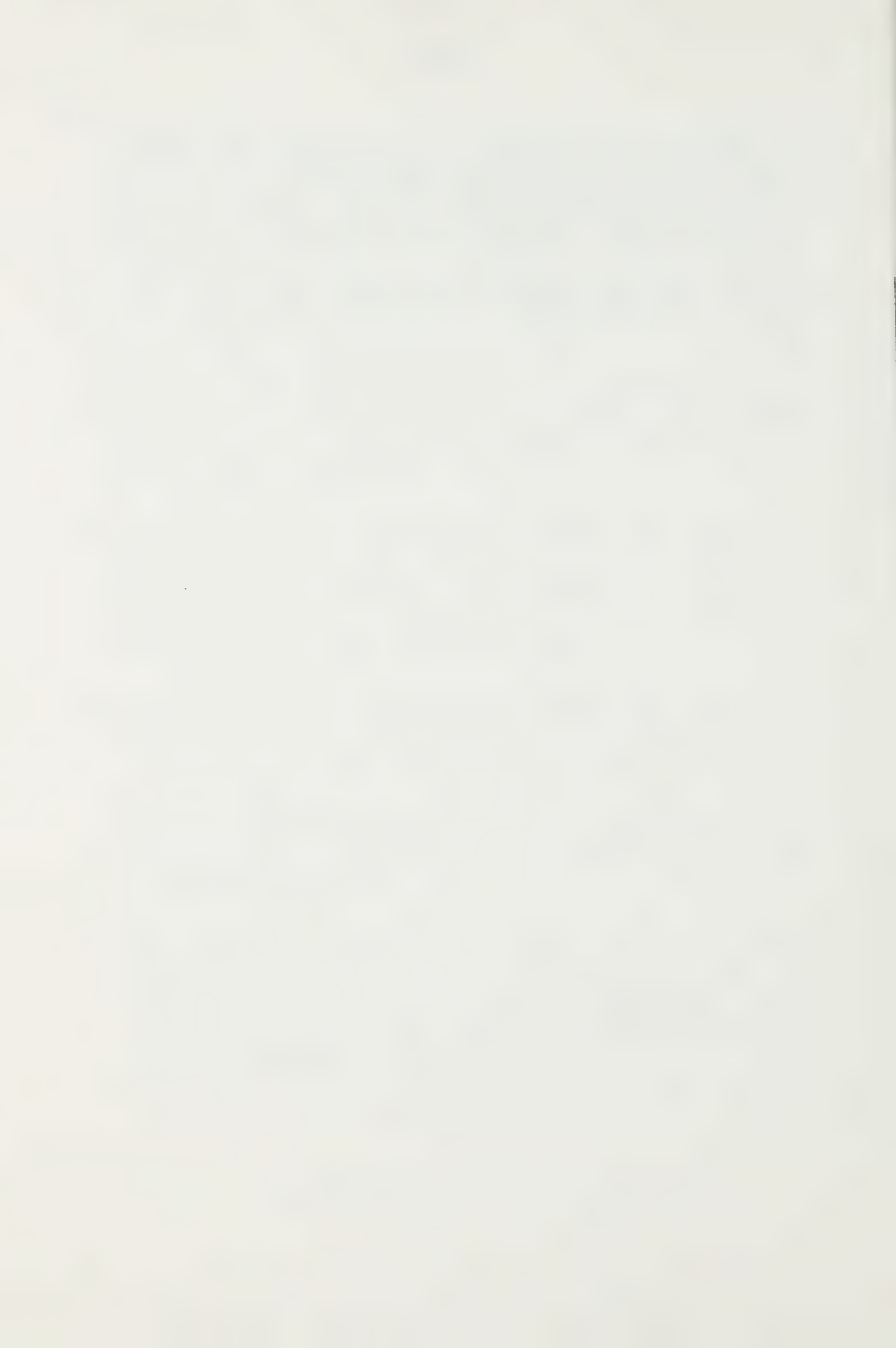
8. ACCORDINGLY, THE COMMITTEE RECOMMENDS THAT THE BOARD OF CHIROPRACTIC OF ONTARIO ALTER ITS PRACTICE OF INTERPRETING SECTION 25(2) OF REGULATION 228 BY REQUIRING APPLICANTS FOR THE ONTARIO CHIROPRACTIC LICENSING EXAMINATION TO HAVE TAKEN A COURSE OF STUDY CONTAINING FOUR ACADEMIC SESSIONS OF NINE MONTHS SEPARATED BY THREE MONTH VACATIONS. THE COMMITTEE FURTHER RECOMMENDS THAT THE BOARD OF CHIROPRACTIC OF ONTARIO ACKNOWLEDGE THAT THE COMPLAINANT HAS SATISFIED THE REQUIREMENTS OF THE REGULATION IN THIS REGARD AND IS THEREFORE ELIGIBLE TO WRITE THE ONTARIO CHIROPRACTIC LICENSING EXAMINATION. (Page 36)

9. THE COMMITTEE RECOMMENDS THAT THE APPEAL BOARD PANEL OF THE WORKERS' COMPENSATION BOARD IMMEDIATELY REVIEW ITS

DECISION OF MARCH 12, 1979 TO DETERMINE THE REASONABLE AND ACTUAL COSTS OF PROVIDING SUPERVISION AND ASSISTANCE WHICH THE CONDITION OF THE COMPLAINANT REQUIRES AND IF NECESSARY INCREASE THE AMOUNT OF THE ATTENDANCE ALLOWANCE. (Page 40)

10. THE COMMITTEE FURTHER RECOMMENDS THAT THE WORKERS' COMPENSATION BOARD REVIEW, BY JUNE 30, 1983, ITS POLICY CONCERNING ATTENDANCE ALLOWANCES TO TAKE INTO CONSIDERATION THE REASONABLE COST OF PROVIDING SUPERVISION FOR THOSE INJURED WORKERS WHO, AS A RESULT OF ACCIDENT, REQUIRE SOMEONE TO BE IN ATTENDANCE, IN ORDER TO PROVIDE THAT SUPERVISION. (Page 40)
11. ACCORDINGLY, THE COMMITTEE RECOMMENDS THAT THE APPEAL BOARD PANEL CANCEL ITS DECISION OF JULY 4, 1979, GRANT THE COMPLAINANT A NEW HEARING AND RECONSIDER HIS ENTITLEMENT IN THIS CLAIM EXERCISING THE DISCRETION GIVEN IT UNDER SECTION 43 OF THE WORKERS' COMPENSATION ACT. (Page 43)
12. ACCORDINGLY THE COMMITTEE RECOMMENDS THAT THE APPEAL BOARD PANEL OF THE WORKERS' COMPENSATION BOARD REVOKE ITS DECISIONS OF OCTOBER 3, 1978 AND GRANT THE COMPLAINANT THE FULL ASSESSED VALUE OF HIS PERMANENT PARTIAL DISABILITY PENSION RECOGNIZING THE NON-ORGANIC COMPONENT OF HIS DISABILITY UP TO THE DATE THE COMPLAINANT LEFT CANADA PERMANENTLY. (Page 45)
13. THE COMMITTEE FURTHER RECOMMENDS THAT THE WORKERS' COMPENSATION BOARD ASSESS AND DECIDE WHETHER THE COMPLAINANT SHOULD HAVE CONTINUING ENTITLEMENT TO THE INCREASED AMOUNT OF THE PENSION AFTER THE DATE HE LEFT CANADA PERMANENTLY. (Page 45-46)

14. ACCORDINGLY THE COMMITTEE RECOMMENDS THAT THE WORKERS' COMPENSATION BOARD RECONSIDER ITS DECISION OF JULY 24, 1980 AND ITS DECISION OF NOVEMBER 9, 1981 WITH A VIEW TO GRANTING THE COMPLAINANT A TEMPORARY SUPPLEMENT TO HIS PERMANENT PARTIAL DISABILITY AWARD, ON THE BASIS OF A FULL CONSIDERATION OF ALL RELEVANT EVIDENCE AND FACTORS. (Page 51)



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**ELEVENTH REPORT
OF THE
SELECT COMMITTEE
ON THE OMBUDSMAN**

1984

001 1984

Fourth Session, Thirty-Second Parliament
33 Elizabeth II



LEGISLATIVE ASSEMBLY
ASSEMBLÉE LÉGISLATIVE

March, 1984

The Honourable John M. Turner, M.P.P.
Speaker of the Legislative Assembly

Sir,

We the undersigned Members of the Select Committee on the Ombudsman
have the honour to submit the attached report.

Robert W. Runciman, M.P.P.
Chairman

Ron Van Horne, M.P.P.
Vice-Chairman

James R. Breithaupt, M.P.P.

Odoardo DiSanto, M.P.P.

John Eakins, M.P.P.

William Hodgson, M.P.P.

John Lane, M.P.P.

Robert MacQuarrie, M.P.P.

Robert Mitchell, M.P.P.

Ed Philip, M.P.P.

René Piché, M.P.P.

Yuri Shymko, M.P.P.

MEMBERS OF THE SELECT COMMITTEE
ON THE
OMBUDSMAN

| | |
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| RON VAN HORNE, M.P.P., VICE-CHAIRMAN | London North |
| JAMES R. BREITHAUPT, Q.C., M.P.P. | Kitchener |
| ODOARDO DI SANTO, M.P.P. | Downsview |
| JOHN EAKINS, M.P.P. | Victoria-Haliburton |
| WILLIAM HODGSON, M.P.P. | York North |
| JOHN LANE, M.P.P. | Algoma-Manitoulan |
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| ROBERT MITCHELL, M.P.P. | Carleton |
| ED PHILIP, M.P.P. | Etobicoke |
| RENE PICHE, M.P.P. | Cochrane North |
| YURI SHYMKO, M.P.P. | High Park-Swansea |

| | |
|------------------|--------------------------|
| JOHN P. BELL | Counsel to the Committee |
| DR. GRAHAM WHITE | Clerk of the Committee |

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ELEVENTH REPORT OF THE SELECT COMMITTEE ON THE OMBUDSMAN

PART I Introduction

The Committee met for three weeks in September, 1982. Two weeks of that period was taken with its consideration of the Tenth Report of the Ombudsman and other matters.

During the third week the Committee attended the 1983 Conference of Canadian Legislative Ombudsmen in Vancouver, British Columbia hosted by the B.C. Ombudsman, Dr. Karl A. Friedmann. The conference was well attended by present and former Ombudsmen from Canada, the United States, Scandinavia and Australia. The conference was also attended by persons performing Ombudsman-like functions at the federal and municipal levels in Canada and the United States.

The Committee wishes to take this opportunity to formally congratulate Dr. Friedmann and his staff for the excellent program provided during the conference. The topics provided an effective blend between Ombudsman theory and practical considerations fundamental to an Ombudsman's successful operation.

The program included a session on "The Ombudsman as an Officer of the Legislature: How Ombudsmen and Legislators Relate to Each Other". This Committee's Chairman, Robert W. Runciman, M.P.P. spoke, as did Dr. Robert Elliott, Chairman of the Select Standing Committee on Legislative Offices in Alberta and Arthur Maloney, Q.C., first Ombudsman for the Province of Ontario. The Committee understands that this was the first time where such a discussion was held at a Canadian Ombudsmen Conference with participation by members of legislative assemblies.

The session was both helpful and thought provoking. In particular, it introduced to people unfamiliar with its operation, the unique role played by this Committee. The Committee hopes that this or similarly related topics will be included in all future Canadian Ombudsmen Conferences. It is an area which has been substantially unexplored outside the Province of Ontario. Ironically, a Committee "on the Ombudsman" has the potential to substantially enhance the

effectiveness of the Ombudsman and his relationship with the Assembly he serves. The Committee's concept of the role and functions of an Ombudsman has been enriched as a result of its participation in this conference. The Committee intends in future to encourage its members, wherever possible, to attend and participate in conferences of this nature.

In its Tenth Report the Committee had the following comments respecting the person whom the government would appoint as successor to the Honourable Donald R. Morand:

"His successor will inherit a high quality operation with the potential to meet almost immediately, the demands of the office and the needs of the people of the Province of Ontario throughout the 1980's. The people of Ontario require the Ombudsman to be seen to perform his functions and perform them well. The new Ombudsman should be a person with the ability to further develop the office as an effective instrument of the people to redress quickly and forcefully the consequence of maladministration by governmental organizations. The Committee hopes that these comments will provide guidance in the appointment of Mr. Morand's successor."

December, 1983 the Premier announced the appointment as the Province's Third Ombudsman of Dr. Daniel Hill, formerly Chairman of the Human Rights Commission of Ontario. This appointment followed a period of almost a year wherein the office was under the control of two temporary Ombudsmen, the first the Honourable Donald R. Morand and subsequently Mr. Morand's Executive Director, Frank McArdle.

The Committee looks forward to its association with Dr. Hill. The expressions of commitment and support that it has made in previous reports with regard to his predecessors apply equally to him.

The Committee regrets that a permanent Ombudsman was not appointed immediately upon Mr. Morand's 65th birthday and that two temporary Ombudsmen were required over a twelve month period. This delay has adversely affected the

operation of the office. In the future the Committee is prepared, if requested, to assist in the selection process. It is hoped this offer is accepted.

The Committee continues to see, from a statistical analysis, improvement in the backlog of files and in the time taken to complete files. The millstone of the North Pickering files has now been removed from the Ombudsman's inventory and statistics for the current period should reflect that fact by further reduction in the file duration.

The Committee was also assured by the temporary Ombudsman, Mr. McArdle, that in general terms, all problematic, long duration files have been removed from the Ombudsman's inventory and that in future reporting periods there will be very few files which take 33 months and more to complete. The Committee is prepared to accept these assurances and looks forward to a review of the statistics for the current period to assess whether its concern over durations has finally been resolved.

After more than seven years the Committee is now able to report that the process known as North Pickering has been completed. It is almost trite to say that it has not been completed to everyone's satisfaction. Any process which takes seven years to complete invariably fails to serve or satisfy all of those affected by it.

In his Tenth Report the Ombudsman dealt with eighteen former land owners whom the Minister of Housing refused to compensate notwithstanding recommendations by the Ombudsman to that effect. The Committee's consideration of this matter is detailed in Part IV, page 29 of this Report.

The Committee after consideration of all of the relevant factors and hearing from both the Honourable Donald R. Morand and the Honourable Claude Bennett, Minister of Municipal Affairs and Housing, decided that it was unable to support the recommendations of the Ombudsman.

While as far as the Committee is concerned, the substantive matters raised by North Pickering are at an end, the questions raised concerning the type and length of process employed remain to be answered. In hindsight, the Committee has grave reservations that the Ombudsman should ever have been permitted to further investigate the North Pickering matter by means of the "Hoilett hearings". That process exposed the Ombudsman to much criticism and attack by those who believed that they were not best served by the process. As well, other developments such as those surrounding the Donnelly Commission and the applications to the Court doomed the process to failure almost from the beginning.

The Committee intends to explore with Dr. Hill and with his predecessors, the lessons of North Pickering. These lessons should enable the Ombudsman, the Government, the Legislature and the Committee, if faced with similar circumstances, to formulate a process for resolution of the problem with a minimum of time and confrontation.

In January of this year the Committee held a brief introductory meeting with Dr. Hill. At that time various Committee members made suggestions to him of matters to which he might give attention. In particular, the Committee expressed its desire that, hereafter when "recommendation denied" cases are considered by the Committee, the Ombudsman be in attendance to lead the discussion on behalf of his office. Such participation would assist the Committee in gaining further understanding of the reasons for these recommendations. It would underscore the Ombudsman's commitment to these recommendations and provide more equivalent representation to those who appear before the Committee from the governmental organizations concerned. The Committee looks forward to participation by Dr. Hill in this part of its proceedings.

The Committee has adopted a new practice of deliberating conclusions and recommendations immediately after considering each "recommendation denied" case reported by the Ombudsman. Where the Committee, during this initial deliberation, decided to support a recommendation made by the Ombudsman it immediately announced that decision to the governmental organization affected as

well as the recommendation which the Committee would include in its Eleventh Report. The Committee also made it clear to the governmental organizations affected that it expected a response to the Committee's decision and recommendation without undue delay.

The purpose of this procedure is to eliminate the inordinate period of time between the announcement of the Committee's decision supporting an Ombudsman recommendation (previously when its reports were tabled in the Legislature) and the time when the governmental organization implements the recommendation. Under the old system, up to twelve months might elapse between the issuance of the Committee's recommendation and its implementation.

The Committee is pleased to report that in two of the three cases where its decision and recommendation were announced immediately to the governmental organizations (which appear elsewhere in this report) they have already been implemented. The time saving has therefore been dramatic.

The Committee has also adopted a practice whereby, in formulating its recommendations to the Assembly, it will not necessarily adopt the language of the Ombudsman's recommendations. Previously, the Committee has endeavoured where possible, to frame its recommendations identically to the Ombudsman's, thus signifying full support. Unfortunately, some governmental organizations were interpreting and implementing the Committee's recommendations in such a way so as to satisfy the letter of those recommendations but not their spirit.

In the future the Committee will require the Ombudsman to frame his recommendations in language which will eliminate any doubt or ambiguity as to what result is desired. The Committee will not permit itself in the future to become a party to a recommendation which will allow a governmental organization to play technical word games in its interpretation and implementation.

In January of this year, the Committee travelled with representatives of the Ombudsman's office, to North Bay, Cochrane, Timmins, Kapuskasing and the

James Bay communities of Attawapiskat, Fort Albany, Moose Factory and Moosonee. The purposes of the trip were to study, first hand, the operation of the Ombudsman in Northern Ontario, particularly as it affects our native population, and to establish personal contacts with the peoples of the various northern communities.

The experiences gained during the visits to the various communities have underlined some fundamental principles which the Committee intends to apply, where appropriate, in the future. The importance of travel to the fulfillment of Committee's term of reference is one such principle. The insights gained by the first hand experience cannot be duplicated in Committee rooms at Queen's Park.

One regret shared by all Committee members is that the visits were too short. Four days is simply not enough time to fully comprehend and assess the special issues which confront the people of Northern Ontario and to consider how the Ombudsman can assist them. However, the critical first step has been taken. Personal contact has been made with these communities and necessary preliminary questions have been asked. What follows is the Committee's commitment to further and more extensive contacts with the Northern communities to ensure that, in the context of the Ombudsman, his office will not only be, but be seen to be, as accessible and effective for them as it is for the people of the "South".

During its trip though the North, the Committee had the privilege and honour of meeting with Mr. Doug Rickard of Moosonee. In December, 1983 Mr. Rickard, who is 19, exhibited extraordinary courage and resourcefulness in walking for 6 days over 100 miles of rugged Northern Ontario bushland to obtain medical assistance for his stricken mother.

The Committee was moved by his remarkable accomplishment, and on its return to Toronto, directed the Chairman to write on its behalf to the Director of the Chancellery of Canadian Decorations in Ottawa, supporting Mr. Rickard's nomination for the Star of Courage award.

PART II Tenth Report of the Select Committee

(a) Response from the Ombudsman to the Report and Recommendations

The Temporary Ombudsman, Frank McArdle was given the unenviable task of responding to the Committee's Tenth Report. The Committee recognized that it would have been unfair to require any definitive statement or commitment from Mr. McArdle which might prove inconsistent with or contradict the policies and priorities of the permanent Ombudsman. Accordingly, with the exception of the statistical analysis, the matter with which Mr. McArdle is ordinarily closely involved, the Committee did not require the usual full response. Rather, it intends to leave matters such as role of the Ombudsman and his relationship to the Assembly and to this Committee, and the Ombudsman's administrative priorities, to future discussions with Dr. Hill.

The Committee wishes to thank and commend Mr. McArdle and the staff of the Office of the Ombudsman for their advice and assistance during the hearings in September. Once again their contribution contributed greatly to the Committee's ability to complete the many matters on its agenda.

(b) Responses from Governmental Organizations to Recommendations contained in the Report

(1) Ministry of the Attorney-General

The Ombudsman and the Committee have been endeavouring for over two years to have the Attorney-General table a Bill in the Legislature amending the Ombudsman Act, 1975. The Committee in its Tenth Report recommended that:

"The Attorney-General table, during the 32nd Parliament of this Legislature a Bill amending or otherwise dealing with the Ombudsman Act having regard for the matters contained in the draft bill and policy submission provided by the Ombudsman in January, 1981." (Recommendation No. 4)

The Committee has been advised by a representative of the Attorney-General that it is "fairly likely" that such a Bill will be introduced during the Spring Session of the Legislature in 1984. The Committee expects that the Attorney-General will be able to meet this time commitment. It stands ready therefore to

receive this Bill for the necessary and appropriate consideration after it has been tabled. Until the Bill is tabled Recommendation No. 4 in its Tenth Report remains outstanding.

(2) Ministry of Consumer and Commercial Relations

In its Tenth Report the Committee recommended that:

"The Liquor Control Board of Ontario undertake such a study and review and report to it as soon as possible on the need for such an outlet. In undertaking this investigation the Board should have regard for the criteria discussed with the Committee on September 8th, 1982." (Recommendation No. 6)

This Recommendation required the Liquor Control Board of Ontario to undertake a study to determine whether a need exists, particularly in Northern Ontario, for the establishment of liquor outlets in retail establishments in municipal airports. The Board declined had to implement the recommendation of the Ombudsman that such an outlet be established in a specific northern municipal airport. The Board lacked, in the Committee's opinion, any actual evidence of the lack of need for such a service. While the Committee did not support the recommendation of the Ombudsman, it nevertheless felt compelled to require the Board to undertake such a study.

The Board through its legal counsel filed with the Committee the results of a study which was undertaken. The study concluded that no real need for such a service exists particularly in the North, and that the needs of the specific Northern community in question are being served adequately by a nearby LCBO outlet. The Committee accepts this report as full compliance with its recommendation.

(3) Ministry of Health

(i) Complaints No. 9 and 10

In its Tenth Report the Committee recommended that:

"The Ministry of Health pay that portion of the claims of complainants contained in case summaries 9 and 10 which would have been an insured benefit had the operation been performed by a physician. The Committee further recommends that Section 43 of Regulation 323/72 of the Health Insurance Act, 1972 be amended to permit the General Manager to determine the amount of payment for exceptional cases or medical procedures performed by persons in possession of the necessary hospital privileges who are not physicians. The Committee intends that these recommendations apply only to members of the Royal College of Dental Surgeons who have obtained the necessary hospital privileges." (Recommendation No. 7)

This recommendation which supported the recommendations of the Ombudsman in the two cases mentioned, is intended to provide O.H.I.P. coverage for medical and related procedures, which would be covered by O.H.I.P. if performed by a physician, when performed in a hospital setting by qualified dentists with hospital privileges.

The Committee was informed that the General Manager of O.H.I.P. will take steps to reimburse the two persons involved in the two complaints as required by the recommendation. When that reimbursement occurs the Committee will consider that that part of its recommendation has been satisfied.

The second part of the recommendation intended to give the General Manager discretion to determine amounts for payment in the future which are not expressly covered by the O.H.I.P. fee schedule then in force. The Committee was advised that as worded the recommendation poses some practical problems for the Ministry. Accordingly, the Ministry has suggested that the Committee accept a process whereby meetings will be held on an annual basis between the Ministry and the Ontario Dental Association to ensure that the relevant O.H.I.P. fee schedule is updated so as to be a comprehensive summary of procedures performed by dental surgeons in hospitals. The Committee understands that if this procedure is invoked it will substantially eliminate the problem which gave rise to the two complaints (a fee schedule which lagged behind actual services performed by dentists in a hospital setting).

The Committee was assured by the Assistant Deputy Minister of Health that this alternate process, both in the intermediate and long term, will accomplish the same results as the Committee intended by its recommendation. The Committee, therefore, relying upon the assurances given by the Ministry of Health, accepts the process suggested by the Ministry as compliance with its recommendation. The Committee intends during its sitting in 1984, to review its status with representatives of the Ministry of Health.

(ii) Complaint No. 11

In its Tenth Report the Committee Recommended that:

"The Board of Chiropractic of Ontario alter its practice of interpreting Section 25(2) of Regulation 228 by requiring applicants for the Ontario Chiropractic Licensing Examination to have taken a course of study containing four academic sessions of nine months separated by three months vacations. The Committee further recommends that the Board of Chiropractic of Ontario acknowledge that the complainant has satisfied a requirement of the regulation in this regard and is therefore eligible to write the Ontario Chiropractic Licensing Examination." (Recommendation No. 8)

This Recommendation supported a recommendation of the Ombudsman intended to permit a complainant to write the Ontario Chiropractic Licensing Examination notwithstanding that he had completed his courses of study by a semester system over three years as opposed to the system in Ontario of four academic years of nine months each separated by three month vacations.

The Committee was informed that in February, 1983 the Board of Directors of Chiropractic unanimously voted that:

"it be the policy of this Board in Regulation 248, Section 26(2) the "academic year" be interpreted as consisting of nine months in duration more than one of which may be completed consecutively".

The Committee was also informed that the complainant in question in fact wrote the examinations in April, 1983. The Committee accepts the Board's response as full compliance with its recommendation.

(4) Ministry of Labour - Workers' Compensation Board

(i) Complaint No. 38 - Sixth Report of the Ombudsman

In its Tenth Report the Committee recommended that:

"The Workers' Compensation Board reconvene a hearing on this matter and consider the evidence of the complainant's family physician and the psychiatrist retained by the Ombudsman first hand and thereafter decide whether the policy of benefits should be applied." (Recommendation No. 5)

The Committee made this recommendation after it concluded that during a previous re-hearing of the matter the Appeal Board Panel did not give adequate consideration to the evidence of the complainant's attending physicians including the psychiatrist retained by the Ombudsman, in assessing whether the policy of benefit of the doubt was applicable to the circumstances of this case. The Committee was concerned that the Board had made assessments of the qualification and abilities of certain physicians without ever having considered their testimony in person. The Board advised the Committee that it accepted the recommendation of the Ombudsman and accordingly reconvened a hearing on the 20th of September, 1983. On the 2nd of November, 1983 the Board released its decision wherein after reviewing briefly the evidence of the family physician and the psychiatrist retained by the Ombudsman, which latter evidence it describes as "speculative and inconclusive" decided that the policy of the benefit of doubt did not apply to this case. The Board concluded:

"on the balance of probabilities, that a causal relationship between (the Complainant's) condition diagnosed as post-traumatic neurosis, and the industrial accident of December 19, 1969, has not been established."

The Board arrived at this decision notwithstanding that it appears that the only medical evidence it considered first hand was from the complainant's physicians who in varying degrees expressed the opinion that the industrial accident in question contributed to the post-traumatic disability. The Board does not appear to have heard or considered any viva voce testimony from any other medical expert that the industrial accident did not cause in any way the post-traumatic symptoms.

The Committee wishes to receive the comments of the Ombudsman before it comes to any final conclusions. However, it does seem to the Committee at this point that the Board is not applying the doctrine of benefit of the doubt as intended. From the brief summary of the evidence as set out in the Board's decision it appears that a classic case for the application of the policy has been made. The Committee will pursue this matter again with representatives of the Workers' Compensation Board as soon as possible.

(ii) Complaint No. 19

In its Tenth Report the Committee recommended that:

"The Appeal Board Panel of the Workers' Compensation Board immediately review its decision of March 12, 1979 to determine the reasonable and actual costs of providing supervision and assistance which the condition of the complainant requires and if necessary increase the amount of the attendance allowance." (Recommendation No. 9)

The Committee also recommended that:

"The Workers' Compensation Board review, by June 30, 1983, its policy concerning attendance allowances to take into consideration the reasonable cost of providing supervision for those injured workers who, as a result of accident, require someone to be in attendance, in order to provide that supervision." (Recommendation No. 10)

The Board advised the Committee that it accepted both recommendations of the Ombudsman. Pursuant to Recommendation No. 9 an Appeal Board Panel reconsidered its decision of March 12, 1979 and concluded that based

upon the findings the Board has made respecting the complainant's condition and degree of disability, the \$280.00 currently received as an attendance allowance was adequate to cover the current costs of commercially available attendance. The Board compared the monthly allowance received to the cost of certain commercial services presumably available within a reasonable distance of the complainant's residence. The Board declined to increase the attendance allowance.

The Ombudsman challenged the conclusions of the Board that suitable services were available to attend the needs of this complainant for the amount of attendance allowance paid. The Committee shares some of the Ombudsman's concern that the Board inquiries were not as complete as required in the circumstances. The Committee is still unable to determine whether or not the Board has properly assessed the actual costs required to meet this complainant's needs regardless of whether those needs are as identified by the Ombudsman or as by the Board. The fundamental problem remains that there are those, including the Ombudsman, who believe that the complainant is receiving an inadequate allowance having regard to the attendance needs his condition has created. To resolve this issue the Committee has accepted suggestions made by representatives of the Workers' Compensation Board. First, if the complainant's wife confirms that she intends to obtain full-time employment, then the Workers' Compensation Board shall fund the entire cost of providing the necessary persons or person to attend to the complainant as his needs require when his wife is out of the home at work.

Secondly, and in any event, the Workers' Compensation Board will immediately assemble a treatment team from their Head Injury and Neurology Clinic and undertake all necessary discussions with the complainant's family physician with a view to reconciling the different views respecting the actual attendance needs of the complainant.

Thirdly, after that reconciliation has been done, the Board shall, at its expense, take all necessary steps to identify and provide an individual to attend the home and render the necessary attendance allowance.

The Committee intends to discuss the Board's implementation of these steps when it next conducts its hearings.

(iii) Complaint No. 20

In its Tenth Report the Committee recommended that:

"The Appeal Board Panel cancel its decision of July 4, 1979, grant the complainant a new hearing and reconsider his entitlement in this claim exercising the discretion given it under Section 43 of the Workers' Compensation Act." (Recommendation No. 11)

The Committee supported the recommendation of the Ombudsman which was intended to provide the complainant compensation by a permanent disability pension on the basis of the bi-lateral hearing loss suffered as a result of his exposure to hazardous levels of industrial noise.

The Board has advised the Committee that it will comply with the recommendation. To date however the Committee has not received notice of any further decision or action. Accordingly the Committee defers any further discussion of this matter.

(iv) Complaint No. 21

In its Tenth Report the Committee recommended that:

"The Appeal Board Panel of the Workers' Compensation Board revoke its decisions of October 3, 1978 and grant the complainant the full assessed value of his permanent partial disability pension recognizing the non-organic component of his disability up to the date the complainant left Canada permanently." (Recommendation No. 12)

The Committee also recommended that:

"The Workers' Compensation Board assess and decide whether the complainant should have continuing entitlement to the increased amount of the pension after the date he left Canada permanently." (Recommendation No. 13)

The Board accepted and in fact implemented Recommendation No. 12. However, the Board misinterpreted Recommendation No. 13 and rescinded the increased pension amount from the date the complainant left Canada permanently. The Board took that step without assessing whether the complainant had ceased to be entitled to the increase. Since the Board has previously taken the position that it cannot adequately assess entitlement without the complainant's attendance in person, it is reasonable to require such an assessment before deciding whether the increased pension amount should be discontinued.

ACCORDINGLY THE COMMITTEE RECOMMENDS THAT THE WORKERS' COMPENSATION BOARD PAY THE COMPLAINANT THE INCREASED PENSION AMOUNT FROM THE DATE HE LEFT CANADA UNTIL SUCH TIME AS IT DECIDES ENTITLEMENT IS NO LONGER APPROPRIATE, BASED UPON A PERSONAL ASSESSMENT OF THE COMPLAINANT EITHER IN CANADA OR IN THE COUNTRY WHERE HE CURRENTLY RESIDES. ¹

(v) Complaint No. 22

In its Tenth Report the Committee recommended that:

"The Workers' Compensation Board reconsider its decision of July 24th, 1980 and its decision of November 9th, 1981 with a view to granting the complainant a temporary supplement to his permanent partial disability award on the basis of a full consideration of all relevant evidence and factors."
(Recommendation 14)

This recommendation, was framed in identical language to the recommendation of the Ombudsman. The Committee concluded that in assessing entitlement to benefits under Section 43(5) of the Workers' Compensation Act, the Board was required to determine the threshold question of whether "the impairment of earning capacity of the employee is significantly greater than is usual for the nature and degree of his injury". That question can only be determined after a consideration of all relevant evidence and factors and not solely on the basis of a comparison of current earnings to 75% of pre-accident earnings.

The Board advised the Committee that it had accepted its recommendation. It subsequently issued a decision in September 20th, 1983 wherein it purported to have reconsidered all of the relevant evidence and factors but denied the complainant any entitlement to a supplementary award under Section 43(5) of the Act.

The Ombudsman has taken the position that the Board has not complied with the Committee's recommendation since it has failed to award the complainant a temporary supplement. The Ombudsman asserts that the phrase in his recommendation as adopted by the Committee "with a view to granting the complainant a temporary supplement to his permanent partial disability award" places an obligation on the Board to award such a supplement after its reconsideration of its two previous decisions.

The Board on the other hand, states that it has complied with the "letter" of the recommendation. It believes that its only obligation was to reconsider the decisions in question leaving the Appeal Board Panel the full discretion to decide the question of entitlement.

The Ombudsman asserts that even though the language of his recommendation is lacking in precision as to the desired result, it was nevertheless made abundantly clear to the Board both during the investigative process and during the hearings before the Select Committee that the recommendation required the award of some temporary supplement. In the Ombudsman's opinion, the only discretion that was left to the Board was the determination of the quantum of the supplement, not whether one should be paid.

The Committee is thus placed in a position of deciding whether all of the circumstances warrant a restatement of its recommendation so as to best serve the intention of the Ombudsman and of the Committee members who decided to support the Ombudsman in this case. A review of all of the relevant documentation and transcripts of the proceedings has not revealed any lack of understanding and appreciation by the representatives of the Board of the real intention of the

Ombudsman's recommendation. The Board appears to have adopted a technical interpretation of the recommendation and relies upon actions based upon that technical interpretation as constituting total compliance.

The Committee has decided that it should in these circumstances clarify its recommendation. This decision does not prejudice the Board in any way since at all material times it was aware of the desired result. If the Committee accepted the Board's actions as full compliance with the recommendation, it would seriously diminish the effectiveness of the Ombudsman and might well be a party to injustice to the complainant whose claim for a temporary supplement had in substance been supported by both it and the Ombudsman.

ACCORDINGLY, THE COMMITTEE RECOMMENDS THAT THE WORKERS' COMPENSATION BOARD REVERSE ITS DECISION OF SEPTEMBER 20TH, 1983 AND GRANT THE COMPLAINANT A TEMPORARY SUPPLEMENT TO HIS PERMANENT PARTIAL DISABILITY AWARD. IT IS UNDERSTOOD THAT THE BOARD RETAINS FULL DISCRETION IN ASSESSING AND QUANTIFYING THE AMOUNT OF SUCH SUPPLEMENT. 2

The Committee has been assured by the Ombudsman and all appropriate members of its staff, that hereafter all recommendations made pursuant to Section 22 of the Ombudsman Act will precisely and comprehensively set forth the result intended. The Committee expects hereafter that where the Ombudsman intends that something be done by the governmental organization in question in respect of the matter of complaint that the "something" be spelled out for all to know and understand.

The Committee will also expect hereafter when it considers recommendations from the Ombudsman that the precise nature of the result intended will be explained to the Committee in order that any recommendation it may decide to make can be framed accordingly. The Committee has decided to defer, for the moment, any further consideration of whether this matter should be embodied in a general rule for the guidance of the Ombudsman in the exercise of his functions.

PART III Tenth Report of the Ombudsman

(a) Statistical Analysis

The statistics reported by the Ombudsman to the Committee generally support trends perceived in recent years. Compared to the previous fiscal year (April 1, 1981 to March 31, 1982) the number of matters (files), fast action and information requests opened during the fiscal period increased by 12% (9567 to 10,754), the number of files opened dropped (3,217 to 3,044) and the number of in-progress cases decreased (1,457 to 1,086). The statistics also support the results claimed by the Ombudsman that the backlog which has existed in previous years is continuing to decrease. The number of matters (files, fast action and information request) closed increased from 10,175 to 11,801.

No useful purpose would be served in summarizing the assurances given by the Temporary Ombudsman that procedures are now in place designed to ensure that the duration taken to complete files in the future (general average or otherwise) will be reasonable and acceptable. The time taken by the office to process to completion matters which the Committee has described previously as involving pure Ombudsmans' functions (mainly jurisdictional complaints) remains one of the Committee's chief concerns. Notwithstanding the commendable efforts of the office in closing more files than ever before and having the lowest number of open files in the history of the office, the fact remains that it still takes too long to get things done.

For example, during the last fiscal period under the category of action described by the Ombudsman as "Inquire", out of a total of 2,054 files closed, 438 took between 13 and 24 months to close, 118 took between 25 and 36 months to close, and 105 took between 37 and 90 months to close. The 661 files taking between 13 and 90 months to close cannot all be explained by reasons "beyond the control of the office". The Committee does not intend to take any further steps at this time save the comments already expressed. It does intend however to discuss this matter during its next formal hearing with Dr. Hill and members of his staff.

(b) Recommendations in previous Ombudsman Reports and/or Select Committee Reports in respect of which it is expected that some further action will be taken by the governmental organization affected.

(i) Ministry of Education

The Ministry of Education has still not implemented Recommendation No. 23 of the Committee's Third Report:

"That the Ministry forthwith pursue its discussions with the insurance industry and other interested parties for the purpose of developing an appropriate contact of insurance in the indemnity type at a realistic premium which will adequately compensate the pupil for injuries sustained in the case of a peer accident as a result of participation in shop classes and in organized athletic activities."

In its Tenth Report to the Committee advised that the recommendation had been implemented in part by virtue of reason of amendment to The Education Act (Section 8(i)). The Committee also stated that further steps must be taken to ensure that other pupils participating in school programs of the kind mentioned in the recommendation have available insurance coverage in the event of "pure accident". The Committee suggested that this could be accomplished by the implementation of a policy of insurance on a province wide basis funded ultimately by the people of the Province of Ontario. The Committee was advised that this question was placed on the Agenda of the Ministry of Education meeting with provincial educational organizations in mid-October, 1983. The Committee was advised that discussions with these groups was crucial before any steps could be taken to implement the Committee's recommendation. The Committee intends to pursue this matter with Ministry officials during its next hearings.

The Committee is most concerned over the length of time taken by the Ministry of Education to implement its recommendation. ACCORDINGLY, THE COMMITTEE RECOMMENDS THAT RECOMMENDATION NO. 23 OF ITS THIRD REPORT BE IMPLEMENTED BY THE MINISTRY OF EDUCATION BY MEANS OF A POLICY OF INSURANCE ON A PROVINCE-WIDE BASIS BEFORE THE END OF 1984.³

(ii) Ministry of Government Services

Recommendation No. 24 of the Committee's Third Report provided that the Ministry should table appropriate legislation removing the present restriction on total current earnings of a provincial superannuant. Management Board of Cabinet has approved in principle an amendment to the Public Service Superannuation Act which will remove the present provisions requiring a reduction or suspension of pension benefits where a pensioner is re-employed by the Crown. Representatives of the Ministry assure the Committee that the amendment is a priority.

The Committee is of course concerned over the inordinate delay taken to implement this recommendation. It urges the Ministry of Government Services and the government in general to take such steps as necessary to table this amendment as quickly as possible. The Committee will continue to pursue this with Ministry representatives until the amendment is passed.

(iii) Ministry of Health

Recommendation No. 27, Committee's Third Report, Recommendation No. 1, Committee's Sixth Report (Public Hospitals Act criteria applicable to applications for appointment to a hospital medical staff)

The Committee is still awaiting enactment of regulations provided to it in November, 1982 which with one exception will comply with its recommendations in this regard. The Committee expects that by its next report its recommendations will be fully implemented.

The Committee is disappointed that the Ministry failed to invite and receive submissions from the public on the matter of appropriate amendments to the Public Hospitals Act and the regulations dealing with the issue of appointment to public hospitals. The Ministry has no plans to seek public opinion at this time since it does not perceive any urgency requiring the issue to be canvassed any further at this time.

Recommendation No. 1, Committee's Ninth Report (Ontario Health Insurance Plan Code R991)

In its Tenth Report, the Committee stated that it:

"expects hereafter that O.H.I.P. will comply with all aspects of the Committee's recommendation so that all persons who have submitted claims to O.H.I.P. for payment for services rendered outside of Ontario are advised of their right of appeal when they are notified of the decision."

The Ministry of Health is concerned that the Committee's expectations may place an obligation on O.H.I.P. to advise all persons who have submitted claims to O.H.I.P. of their right of appeal. This of course was not the intention of the Committee when it made the recommendation. The Ministry has proposed that hereafter, the General-Manager of O.H.I.P. will inform all who submit claims for payment for out-of-province surgical procedures, of their right to appeal O.H.I.P.'s decision. The Ministry's opinion is that with improved communication arrangements between the medical profession and O.H.I.P., it will be informed in advance of the procedure in substantially all of the cases and will thereby inform the patient in question of his or her right of appeal of the General Manager's decision respecting the application for benefit payments.

The Committee accepts the Ministry's proposal for implementation of this recommendation as specifically set out in the Ministry's letter to its counsel dated September 23rd, 1983.

Detailed Summary No. 40 Ombudsman's Third Report (Nursing Homes Act)

In that recommendation the Ombudsman provided:

"that the Nursing Homes Act, 1972, be amended in order that provisions be made for the successful candidate for the construction of a new home to make application for conditional licence immediately upon the making of the award to him. This licence should be conditional on compliance with the terms of the proposal and any subsequent stipulations imposed by the Ministry prior to the granting of an unconditional licence."

While the Committee has previously been advised that such an amendment will be forthcoming, it now understands that circumstances now exist which have caused the Ministry to postpone any amendment to that Act. However, to fulfil the spirit of the recommendation, the Minister of Health has proposed an interim arrangement whereby the Ministry will undertake to the Ombudsman that on any call for proposals the Ministry will undertake to the successful proposer that he will be awarded a licence provided that he constructs and establishes the home in question in accordance with Nursing Home Act and the regulations. The Committee understands this interim solution as acceptable to the Ombudsman. The Committee accepts this proposal as well on the understanding that legislation amending the Act will be passed at sometime in the future which will fully satisfy the Ombudsman's recommendation.

(iv) Ministry of Housing, (Recommendation 3) Eighth Report of the Select Committee (Ontario Housing Corporation Field Manuals)

Since the Committee made this recommendation, it has had series of discussions with representatives of Ontario Housing Corporation respecting the progress and content of the amendments made to its Field Manuals. It has expressed some concerns that some of the amendments, particularly the introduction of a new "appeal process" may not fully satisfy the rules of administrative fairness.

The General Manager of the Corporation assures the Committee that as the amendments proceed, it would be taking the Committee's concerns, as expressed in its report, into account. Further, the new appeal process is being evaluated and the Corporation will pay particular attention to any problems which have developed particularly with the housing authority sitting as its own "Court of Appeal".

The Committee defers any further comment on this matter until the amendments to the Manual have been completed and reviewed against its recommendation.

(v) Ministry of Treasury and Economics, Recommendation No. 34, Committee's Third Report (Amendment to the Audit Act and Financial Administration Act)

This recommendation initially was made to the Ministry of Government Services. The Ministry felt that unless it could identify a lawful authority or legal obligation it had no power to pay any monies to a complainant as recommended by the Ombudsman pursuant to Section 22 of the Ombudsman Act.

In its Tenth Report the Committee reported certain preliminary discussions with representatives of the Treasurer concerning an appropriate amendment to the Financial Administration Act. The Committee is pleased to report that a proposed amendment has been settled. It will be placed in the Ombudsman Act rather than the Financial Administration Act. It was agreed by all concerned that the amendment to the Ombudsman Act provided a more practical solution to the apparent absence of legal authority. It remains for this amendment to be tabled and passed. It has been noted earlier in this report that the Attorney-General will probably be tabling a Bill amending the Ombudsman Act during the Spring session of the Legislature. ACCORDINGLY, THE COMMITTEE RECOMMENDS THAT THE AMENDMENT TO THE OMBUDSMAN ACT SET OUT IN SCHEDULE 1 TO THIS REPORT BE INCLUDED IN THE BILL WHICH THE ATTORNEY-GENERAL WILL TABLE IN THE LEGISLATURE AMENDING THE OMBUDSMAN ACT. 4

(vi) Ministry of Labour - Workers' Compensation Board

Recommendation No. 31 - Third Report of the Select Committee

The Workers' Compensation Board still has not caused an amendment to be made to the Workers' Compensation Act providing for a statutory authority to recover or write-off overpayments made to claimants. The Committee has been advised on a regular basis that while the Board is committed to the amendment it cannot predict when such will occur. The Committee understands that the principal reason for the delay in amending the legislation is the more fundamental issue of Workers' Compensation in Ontario as raised by Professor Weiler in his recent report. The Committee will continue to press the Workers' Compensation Board for an amendment to the Act in a manner which will fully satisfy this recommendation.

**PART IV Recommendations denied by Governmental Organizations as
Reported in the Tenth Report of the Ombudsman**

General

Ordinarily, when the Committee reports on its consideration of "recommendation denied" cases it does so with sufficient detail and reasons so as to enable the reader to gain a full understanding of the Ombudsman's recommendation, the governmental organization's response, and the Committee's conclusions and recommendations, if any.

The Committee during its recent sittings, adopted a new procedure which will, in a number of cases, shorten the waiting period between the Committee's consideration of the matter and the subsequent response of the governmental organization affected to any recommendation which the Committee may make. In three of the cases following (Complaints 7, 21 and 22) the Committee, after considering all of the relevant matters and briefly deliberating, announced that it had passed a motion in each case supporting the recommendation of the Ombudsman and that it would recommend implementation by the governmental organization in its next report to the Legislature. The Committee also advised those affected that it wished a response to its motions and recommendations as soon as possible.

The Committee is pleased to report that the Workers' Compensation Board has accepted the Committee's motions and has taken steps to implement the recommendations framed by the Ombudsman for Complaints 21 and 22.

Accordingly, for these two complaints, the Committee will merely describe briefly the Ombudsman's recommendation, the Committee's motion and the Board's action in implementing it. To fulfill its formal mandate the Committee will also set out the precise recommendation which it passed during its last hearings. The Committee has not yet heard from the Ministry of Consumer and Commercial Relations or HUDAC concerning its motion supporting the Ombudsman's recommendations in complaint No. 7. That matter is therefore reported hereafter in full.

(i) Ministry of Consumer and Commercial Relations

Complaint Summary No. 7

This complaint concerned a decision of the Commercial Registration Appeal Tribunal (CRAT) which upheld the position of HUDAC, the corporation designated to administer the Ontario New Home Warranties Plan, that the complainant was not entitled to any payment from the fund to compensate him for losses suffered in the purchase of a new house.

The Ombudsman's investigation disclosed that the complainant entered into an agreement with C. Limited to purchase a home not yet constructed for the amount of \$113,500. A \$5,000 deposit was paid and the balance was due on closing. Before the home was completed, C. Limited persuaded the complainant to advance a further \$40,000 to ensure completion by a specified date. The complainant secured that additional advance by taking back two mortgages on separate properties owned by the President of C. Limited. Subsequent further mortgage arrangements were made which are not material.

Before the home was completed, C. Limited ceased operation and the complainant, to mitigate his losses and preserve his interest in the premises, acquired the property under Power of Sale from a prior mortgagee for \$86,500. The complainant spent a further \$30,000 to complete the home. In the result, the complainant incurred an additional expense \$48,000.

The complainant made application to HUDAC, which advised that it would only consider a payment of \$5,000 representing the amount of the original deposit. HUDAC took the position that the further \$40,000 paid by way of advance to effect completion as scheduled was not in the nature of deposit as contemplated by the Ontario New Home Warranties Plan Act or its regulations.

The Ombudsman's investigation also raised the issue of whether certain regulations enacted by HUDAC pursuant to the Act were valid. Section 14(1)(a) of the Act provides that:

"Where... a person who has entered into a contract with a vendor for the provision of a home has a cause of action in damages against the vendor for financial loss resulting from the bankruptcy of the vendor or the vendor's failure to perform the contract;...the person or owner is entitled to be paid out of the guaranty fund the amount of such damage subject to such limits as are fixed by the Regulations."

Section 23 of the Act gives HUDAC the power to enact by-laws which are deemed to be regulations "providing for the establishment and maintenance of the guaranty fund and governing procedures for claiming and determining claims for compensation from the guaranty fund."

Section 6 of Regulation 575/77 provides that:

- (1) "A purchaser who does not become an owner and who has a claim under Clause (a) of Subsection 1 of Section 14 of the Act in respect of a Purchase Agreement is entitled to be paid out of the guaranty fund, for all damages against the vendor for financial loss an amount equal:
 - (i) to all deposits owing by the vendor to the purchaser under a Purchase Agreement, other than a Purchase Agreement in respect of a condominium dwelling unit, to a maximum limit of \$20,000.00."

Section 6 of the Regulations, by limiting entitlement to a "purchaser who does not become an owner" has limited the category of "person" referred to in Section 14, Subsection 1. Rather than limiting only the amount of damage that persons can be paid, the regulation has limited all persons who become owners.

The Ombudsman formed the conclusion that Section 6 of the Regulations was not consistent with and was ultra vires of the Act in that it exceeded the regulatory powers given to HUDAC under the statute. He concluded that HUDAC had the power merely to limit the amount that a person was entitled to receive if he came within the provisions of Section 14 (1)(a), not the classes of person who were so entitled.

He formed the opinion pursuant to the Ombudsman Act that the decision of CRAT to deny the claimant entitlement to payment out of the guaranty fund was wrong and was based on a regulation which appears to have been contrary to law as it derogated, without authority, from a substantive right given by statute.

Accordingly he recommended that:

"the Tribunal and the Ministry reconsider the law in which the (complainant's) decision was based and take appropriate steps to amend the regulations to comply with the Ontario New Home Warranties Plan Act."

He further recommended that:

"HUDAC, the Tribunal and the Ministry responsible for the administration of the Act meet and arrange the implementation (of his recommendation), and that appropriate steps be taken to provide for the payment to (the complainant) of his statutory entitlement to compensation."

The Committee understands this latter recommendation is intended to have HUDAC compensate the complainant to the maximum available under the Regulations, \$20,000.

The Ministry has declined to take any direct steps since the Plan is administered solely by HUDAC. The Tribunal considers that it lacks authority to act further, since it heard the appeal and decided it on the merits, applying the law as it currently exists. The Committee notes that in dismissing the complainant's appeal CRAT found as a fact that the original \$5,000 and the next \$40,000 paid to the builder before completion were deposits.

HUDAC has refused to implement the recommendation on the grounds that Section 6 of the Regulations is valid and thus excludes the complainant since he did become an owner of the property. However, before the Committee, HUDAC renewed its offer of \$5,000 to the complainant on the basis that those monies were deposits. It continued however to insist that the subsequent \$40,000 was not a

deposit. Thus HUDAC has acknowledged that the complainant is entitled to compensation, it just disputes the amount.

The Committee accepts the finding of CRAT on appeal in this matter that the first \$45,000 paid by the complainant were deposits. HUDAC is prepared to compensate the complainant for monies which he did pay as deposits. The only issue is one of amount. The Committee considers that HUDAC is bound by the Tribunal's finding on the \$45,000 deposit and accordingly its reasons for refusing to implement the Ombudsman's recommendations are neither adequate or appropriate.

The Committee further agrees with the opinion of the Ombudsman that Section 6 of the Regulations is invalid to the extent it purports to limit the class of persons who would otherwise be entitled to claim reimbursement from the fund. HUDAC acted beyond the powers given to it under the Act in excluding persons who have entered into a contract with the Vendor for the provision of a home and have suffered losses resulting from the bankruptcy of the vendor or the vendor's failure to perform the contract but who have subsequently become the owner of the home. There is no rationale for such a distinction. The Committee further understands that HUDAC is currently taking steps to amend the Regulations thus removing the restriction in question.

The Committee supports the substance of the Ombudsman's recommendations in this case. After hearing from representatives of all parties concerned the Committee decided to support the recommendations and announced its recommendations publicly. The Committee has yet to hear from the Ministry, CRAT or HUDAC as to when they will be implemented.

THEREFORE, FOR THE PURPOSE OF THIS REPORT AND IN FULFILLMENT OF THE COMMITTEE'S TERMS OF REFERENCE IT RECOMMENDS THAT THE MINISTRY OF CONSUMER AND COMMERCIAL RELATIONS (MINISTRY) RECONSIDER THE LAW ON WHICH THE COMPLAINANT'S DECISION WAS BASED AND, WITH HUDAC, TAKE ALL APPROPRIATE STEPS TO AMMEND THE REGULATIONS TO COMPLY WITH THE ONTARIO NEW HOME WARRANTIES PLAN ACT. 5

THE COMMITTEE ALSO RECOMMENDS THAT THE MINISTRY AND HUDAC TAKE APPROPRIATE STEPS TO PROVIDE FOR PAYMENT TO THE COMPLAINANT OF HIS STATUTORY ENTITLEMENT TO COMPENSATION UNDER THE ONTARIO NEW HOME WARRANTIES PLAN ACT. IN THE CIRCUMSTANCES OF THIS CASE THE COMMITTEE CONSIDERS THAT THE SUM OF \$20,000 IS AN APPROPRIATE PAYMENT. 6

(ii) Ministry of Municipal Affairs and Housing (North Pickering)
Complaint Summary No. 24

The history of the Committee's involvement in what has become known as the North Pickering matter is well documented in its previous reports (First Report, pages 5 to 12; Second Report, pages 1 to 4; Third Report, pages 4 to 14; Fifth Report, page 16; Seventh Report, pages 11 to 21; Eighth Report, page 20 to 29; Ninth Report, pages 24 to 25; Tenth Report, page 17). No useful purpose would be served by reviewing those matters at this time.

In his Tenth Report, by way of summary of the more recent events the Ombudsman stated that:

" On December 20, 1982 the Ombudsman issued his report entitled "Report of the Ombudsman of Ontario as a result of Certain Complaints in Relation to the North Pickering Project". In it he disclosed that he had reached agreement with the Minister of Municipal Affairs and Housing on a revised settlement proposal under which the majority of complainants (95 of 113) would receive additional compensation for their land from the Province. In essence, the Ministry agreed to update the settlements from the date of appraisal to the date of offer, and to pay the former landowners the difference between the revised market value and the compensation which they had received. The Ministry also agreed to pay interest at the rate of 6% per annum (the rate prescribed by section 35(1) of the Expropriations Act) until a cutoff date.

However, the Ministry did not agree to include in the settlement 18 former landowners who, in its view, "were fully knowledgeable about the value of these properties and made calculated business decisions to complete the sale at the time

to the Ministry". These 18 landowners came to be known as "investors", in that they were holding relatively large tracts of land (ranging in size from 50 to over 153 acres) for investment purposes. Many of them were companies formed for the purpose of acquiring land from capital provided by individual investors, later selling the land at a profit to those investors.

The Ombudsman acknowledged that these owners were more sophisticated and knowledgeable than the ordinary landowners, and that some of them had considerable experience in buying and selling land. He accepted the Ministry's submission that these landowners made calculated business decisions to sell, rather than to wait for expropriation.

The fact remained, however, that the Government neglected to pay fair market value for these lands, since the appraised values were not updated sufficiently by Project officials. Even "knowledgeable" owners were entitled to receive fair market value.

The Ombudsman noted that, had these owners waited for expropriation and had their claims for compensation determined by the Land Compensation Board, the Board would have had no regard to the character of the owners. He pointed out that if the Government wanted to curb land speculation, it was open to it to introduce appropriate legislation."

As a result of the Ministry's position with respect to the 18 former landowners the Ombudsman formed that opinion, pursuant to Section 22 of the Ombudsman Act, that the Ministry of Housing unreasonably omitted to pay the 18 landowners excluded from the revised settlement proposal, fair market value for their lands. He further formed the opinion that the basis upon which the Ministry seeks to exclude the 18 landowners constitutes improper discrimination under Section 22 of the Ombudsman Act.

He therefore recommended that the 18 landowners be subject to the same terms proposed by the Ministry in its revised settlement proposal. The Committee understands that the terms of compensation as applicable to the lands in question are essentially the difference between the monies paid for the land and the appraised market value increased by 4% a month from the date of the appraisal to

the date that the offer of purchase was made to the landowners plus simple interest of 6% per annum from the date of closing to December 31, 1982. According to the Ministry's calculation the aggregate value of these increases for the 18 landowners is between \$3 million and \$4 million.

Fundamental to the Ombudsman's opinions and recommendations are his findings that:

1. The landowners did not receive fair market value although the Ministry had promised that all landowners affected would receive that amount for their land;
2. A failure by the Ministry to make full and adequate disclosure of information to the landowners prevented them from making an informed decision on whether to sell or wait for expropriation. This is particularly so with respect to the Ministry's failure to disclose its updating policy of appraisals to landowners when agreements for the purchase of land were being consummated;
3. In no meaningful sense of the term were the landowners willing vendors.

The Minister of Municipal Affairs and Housing has refused to implement the Ombudsman's recommendations. He maintains that these 18 were not ordinary landowners but "sophisticated and knowledgeable investors or persons associated with them who purchased land with a view to selling it later at a profit". He notes that they range

"from a group of co-venturers making their first investment in property to ten affiliated companies organized in a very sophisticated manner to realize a profit from investing in the speculative property market that existed in Pickering Township in 1969."

He maintains that all of the landowners invested in the land with the ultimate intention of selling it at a profit which was realized when the land was sold to the government.

On the issue of discrimination as found by the Ombudsman the Minister responds that:

"I can see no injustice or unfair discrimination in refusing to pay further compensation to knowledgeable investors who sold their lands to the government at a profit and thus realized their original investment intention".

The Ombudsman responded that all of the Minister's positions are irrelevant if the 18 landowners failed to receive fair market value on the sale, were unwilling vendors and did not have the benefit of full and adequate disclosure of information at the time when the decisions were taken to sell to the government.

The Committee is unable to support the recommendation of the Ombudsman in this matter. The majority of the Committee decided that the 18 landowners whom the Minister had labeled as speculators should not further profit at public expense.

However, certain members of the Committee expressed concern that rules should not be changed retroactively no matter who might profit thereby and that to pass laws or rules retroactively is to violate a basic principle of justice.

(iii) Ministry of Revenue, Complaint No. 28

This complaint concerns a decision of the Ministry refusing to award the complainant, a summer student employed by the Corporations Tax Branch of the Ministry, an increase in wage from the \$4.65 per hour that he accepted at the beginning of his summer employment in the year in question. The complainant's position essentially is that he was entitled to an increase in salary due to his academic qualifications (law student), his previous summer experience with the Corporations Tax Branch, and the level of work he was performing relative to permanent employees earning higher salaries.

After completing his investigation the Ombudsman found that the complainant was employed with the Ministry in an "underfill" as defined by the government's Manual of Administration. The compensation to be paid to a summer student in an underfill position is defined by the manual as follows:

"Where a student is not required to perform the full range of duties of the assigned position or is subject to different production standards from non-student labour performing the same work, the student may be paid at a rate below that of the minimum rate of pay for the equated classification which:

- shall correspond to a rate in the salary range established for a lower class in the equated series if such lower class exists; OR
- shall be at any rate deemed equitable by the Ministry commensurate with duties performed if no appropriate lower class exists."

However, the Ombudsman concluded that the responsibilities assigned to the complainant were of greater complexity than those assigned to the equated classification identified by the Ministry (Clerk 1). The Ombudsman compared the Clerk 1 responsibilities with the actual duties performed by the complainant and concluded that the complainant performed more responsible and complicated functions.

The Ombudsman formed the opinion that the Ministry's omission to compensate the complainant in accordance with the pay practice outlined in the Ontario Manual Administration was an unreasonable omission within the meaning of the Ombudsman Act. He recommended that:

"the Ministry's practice of paying summer students on the basis of their educational achievement should be altered to conform to the pay policy outlined in the Ontario Manual of Administration."

He also recommended that the:

"Ministry re-examine the amount of wages paid to (the complainant) with a view to paying him the salary which would have been due him had the Ministry conformed with the pay practices outlined in the Ontario Manual of Administration."

The Ombudsman intends by the second recommendation that the salary be increased to some appropriate amount as determined by the Ministry.

The Ministry declined to implement the Ombudsman's recommendations on the grounds that its policy of paying summer students conforms to the policy outlined in the Ontario Manual of Administration and that the salary paid to this complainant was equitable commensurate with the duties he performed during the summer in question.

The Ombudsman has interpreted the Ontario Manual of Administration as requiring Ministries, particularly the Ministry of Revenue in this case, to compensate summer students according to the relative complexity of the duties performed and the responsibilities assigned to them. The Ministry of Revenue, on the other hand, assigns duties to summer students in accordance with their academic qualifications and compensates them according to those qualifications. The Ministry does not accept that this part of the Manual of Administration is legally binding on it. In any event, the provision in the manual dealing with underfills is permissive and thus permits the Ministry to compensate summer students based on academic qualifications.

The Committee does not agree with this latter position. The language of the relevant sections of the Manual of Administration is quite clear. Once having adopted the manual as a means of determining compensation for summer students a Ministry is bound to compensate them either under the basic rate of pay formula or by one of the two formulae for underfill positions. In this case the Ministry has failed to compensate under any of the formulae.

However, the Committee reluctantly agrees with the Ministry's position that this portion of the manual is not binding upon it in determining appropriate compensation for summer students.

The Committee also notes that the complainant, a law student, executed a contract of employment wherein he agreed to the conditions including a rate of pay of \$4.65 per hour. The Ombudsman found that at the time the employment agreement was entered into the complainant was already aware of the matters which gave rise to his complaint but chose not to raise the issue then. It cannot be said therefore that the complainant was operating under any mistake of fact or that the Ministry failed to disclose a material fact or that he did not possess full information before deciding to execute the agreement.

The Committee therefore does not support the recommendation of the Ombudsman in this case.

(iv) Ministry of Tourism and Recreation
Complaint Summary No. 30

This complaint concerns a decision of the advertising and promotion services branch of the Ministry of Industry and Tourism removing the complainant's publication from the Ontario Government's Advertising Program because of an announced printing rate increase. As a result of his investigations, the Ombudsman concluded that the Ministry's decision to remove the complainant's publication from the Government Information/Communication Program was unreasonable, unjust and oppressive. Specifically the criteria of cost efficiency, percentage of Ontario circulation and the number of pages required for tabloid and broadsheet publications receiving advertisements through the program were not uniformly applied. The Ombudsman found that the complainant was dropped from the program for reasons which were not contained in the guidelines and for reasons which were not applied uniformly to other publications.

The Ombudsman accordingly recommended that:

- " (a) the Ministry's decision to remove the (publication) from the program be cancelled and the publication be reinstated at a line rate to be negotiated between the Ministry;

- (b) the Ministry verify circulation figures for publications currently receiving advertising under the program by obtaining printers' invoices from all publishers, and continue to do so annually;
- (c) the Ministry review the administration of the guidelines to ensure equitable treatment for all publications which are eligible for Ontario Government information advertising;
- (d) "the Ministry pay (the complainant) compensation reflecting the amount of money he would have received for the advertising he would have received under the program for March 16, 1982. Compensation should be calculated at a line rate of .72¢ less the recognized industry cost for printing advertisements issued through the program. In the absence of an industry recognized cost, the Ministry should calculate the compensation payable to (the complainant) and provide me with its estimated printing costs factor, and the reasons it believes this factor is unfair."

The Committee understands that the amount of compensation intended by the Ombudsman by this last recommendation is in the range of \$5,000 to \$6,000. The Ministry has implemented the first three recommendations. However it refuses to implement the fourth recommendation on the grounds that the complainant unconditionally chose not to accept the Ministry's advertisements at its stipulated price per line and refused to meet with representatives of the Ministry in an effort to resolve the impasse. In other words, if the complainant had suffered any loss of advertising revenue it was caused by his refusal initially to accept the Ministry's advertising rates and to unilaterally attempt to increase his rates.

The Committee also notes that the placing of advertisements in publications of the type owned by the complainant is at the sole discretion of the Ministry as and when required. Accordingly the complainant had no guaranteed minimum advertising revenue for the period in question.

The Committee is unable to support the fourth recommendation of the Ombudsman. The Ministry has substantially complied with the Ombudsman's recommendations by already implementing the first three. The Committee does not

believe that payment of compensation to the complainant in these circumstances is appropriate or necessary. It also is of the opinion that the response of the Ministry to the Ombudsman's fourth recommendation is both adequate and appropriate. It is surprised and disappointed that the Ombudsman did not form the same opinion.

(v) Ministry of Labour - Workers' Compensation Board

(a) Complaint No. 20

This complaint concerns a decision of the Workers' Compensation Board dated August 17, 1977 denying the complainant entitlement to benefits for a back disability on the grounds that available evidence did not establish an accident or disablement arising out of and in the course of the employment.

The Ombudsman concluded, after his investigation was completed, that evidence indicated that the complainant's degenerative disc disease was aggravated by his work and that available medical opinion established a causal relationship between the aggravation of a degenerative disc disease and the complainant's employment.

Accordingly he formed the opinion pursuant to the Ombudsman Act that the Appeal Board decision that the complainant's back disability was not aggravated by his work was "unreasonable", as evidence clearly indicated a relationship between employment and disability.

He therefore recommended pursuant to Section 22 of the Ombudsman Act that:

"the Appeal Board revoke its decision dated August 17, 1977 and grant (the complainant) entitlement to benefits for a back disability as arising out of and in the course of his employment."

Before the Committee considered this matter in detail it was informed by the Board that an Appeal Board Panel, upon reconsideration of the August 17,

1977 decision, granted the complainant entitlement for a low back disability on an aggravation basis, which arose out of and in the course of his employment in 1974. Inasmuch as the substance of the Ombudsman's opinion and recommendation is on the basis of aggravation of a pre-existing degenerative condition, the Committee is inclined to accept the Board's response as full compliance with the Ombudsman's recommendation. It will however await formal notification from the Ombudsman that he is satisfied with the response before stating his final position.

(b) Complaint No. 21

This was a case in which the Appeal Board denied a request for a partial commutation of the complainant's permanent partial disability pension. As a result of the Ombudsman's investigation he formed an opinion that the Appeal Board's decisions were unreasonable. He accordingly recommended that the Workers' Compensation Board revoke its decisions and award the complainant the partial commutation he requested.

The Committee, after considering the case and hearing from representatives of both the Ombudsman and the Workers' Compensation Board, decided by motion to support the recommendation of the Ombudsman and passed the following recommendation:

THE WORKER'S COMPENSATION BOARD REVOKE ITS DECISIONS OF OCTOBER 29, 1981 AND DECEMBER 23, 1981 AND AWARD THE COMPLAINANT THE PARTIAL COMMUTATION OF HIS PENSION THAT HE REQUESTED. 7

The Board subsequently advised the Committee that it has accepted the recommendation but decided to commute the complainant's disability award in its entirety rather than partially as the Ombudsman intended. The Ombudsman has informed the Committee that he considers the Board's actions to be both adequate and appropriate. Accordingly this matter is now resolved.

It is worthwhile to note that under the Committee's old procedures it might have taken between twelve and eighteen months to obtain such a response. In this case a response took less than two months.

The Committee notes in this case that the two decisions complained of did not fully set forth the Appeal Board's reasons for denying the complainant partial commutation that he sought. Had sufficient reasons been set out in the decisions it could very well have avoided a complaint to the Ombudsman. In that circumstance the complainant, with full knowledge of the Board's reasons, could have then made submissions to the Board on his own behalf which might have persuaded it to commute the pension. The Board should in its decisions at all levels, set forth all of the reasons for the decision reached.

(c) Complaint No. 22

This was a case in which the Appeal Board declined to award the complainant benefits for an injury on the grounds that, at the time of the accident he was not working for a firm covered by the Act. The Ombudsman after completing his investigation, recommended that the Workers' Compensation Board cancel the Appeal Board's decision of December 5, 1973 in order that the complainant be awarded appropriate benefits.

The Committee, after considering the case and hearing from representatives of both the Ombudsman and the Workers' Compensation Board decided by motion to support the recommendation of the Ombudsman and passed the following recommendation. THE WORKERS' COMPENSATION BOARD CANCEL ITS APPEAL BOARD DECISION OF DECEMBER 5, 1973 AND ORDER THAT THE COMPLAINANT BE AWARDED APPROPRIATE BENEFITS. 8

The Board has subsequently advised the Committee that it has agreed to implement the Committee's recommendation. At present the matter is with the Claims Adjudication Branch of the Board for determination of appropriate benefits. The Ombudsman has advised the Committee that he considers the Board's response to be both adequate and appropriate to his recommendation. The Committee concurs with the Ombudsman. The matter is hereby resolved.

PART V Amendments to the Ombudsman Act and Rules for the Guidance of the Ombudsman in the exercise of his functions under the Ombudsman Act

Earlier in this report (pages 7-8) the Committee reiterated its recommendation to the Attorney-General respecting of the tabling, during the Spring session, of a Bill amending the Ombudsman Act. The Committee will make no further comment on this matter until such a Bill has been tabled. The Committee also does not intend to consider whether any additional rules for the guidance of the Ombudsman should be formulated until the Bill amending the Act has been passed. The Committee also intends to give the new Ombudsman, Dr. Hill, every opportunity of providing input to the Committee on both questions of amendments and rules.

Further, if the Government accepts the Committee's proposal of assisting in the Ombudsman selection process, then it should consider reflecting that participation in the Bill to be tabled.

PART VI Communications received from the Public

The Committee has adopted a new procedure designed to shorten the period between the receipt of a communication from a member of the public and its actions with respect to that communication. It has created a sub-committee consisting of Messrs. Van Horne, Runciman and Philip for this purpose. Mr. Van Horne has been appointed Chairman. Decisions of the sub-committee must be unanimous.

The sub-committee intends to meet on a regular basis to consider communications from the public, and with the assistance of representatives of the office of the Ombudsman, to decide whether the whole committee should consider the matters raised by a particular communication. The principle followed by the sub-committee in dealing with these communications remain the same as stated by the Committee in its previous reports. Although each communication will be judged on its merits only those will be actively pursued by the Committee which will assist it in fulfilling its order of reference.

If the sub-committee decides that the matter should not be considered by the whole Committee then the member of the public is so advised in writing. If the sub-committee decides that the matters raised by the communication are sufficiently important to require consideration by the whole Committee then that communication will be placed on the Committee's Agenda for business at its next hearings. In this way many persons who communicate to the Committee will be advised relatively quickly, that their communication has been considered by members of the Committee but that the Committee will not take any further steps. If the sub-committee cannot reach a unanimous decision the the matter is automatically referred to the whole Committee. Early indications are that this new procedure will eliminate the Committee's backlog of such communications and with the involvement of members of the Ombudsman's office, will open lines of communication between some complainants and the Ombudsman's office which may have been perceived by the member of the public to be closed.

PART VII Estimates of the Ombudsman

In November, 1983, the Committee considered for the first time the estimates of the Ombudsman. The discussion between members of the Committee and the Temporary Ombudsman, Mr. McArdle, were fruitful. The level of the discussion and the matters raised therein could only have occurred with this Committee, which possesses unique and extensive experience in Ombudsman matters.

Subsequently the Committee considered the Report of the Public Accounts Committee, released in December, 1983 which dealt with the Office of the Ombudsman. Recommendation 6 of that Report states that:

"The Committee is concerned that the policies of the Ontario Manual of Administration have not been followed by the Office of the Ombudsman. It therefore recommends that the Provincial Auditor review the Office's policies and procedures for compliance with the Manual, and report his findings to the Public Accounts Committee."

This Committee is concerned that a need for such a review exists particularly since in its Second Report (1977) it recommended that:

"The Ombudsman be required to adopt the Manual of Administration as the manual of his office."

and was subsequently informed by the Ombudsman that the recommendation would be implemented. The Committee intends to pursue this matter with the Ombudsman, the Provincial Auditor and the Public Accounts Committee.

PART VIII Committee's Visits to Northern Ontario

On January 9, 10, 11 and 12th, 1984 the Committee travelled to Northern Ontario visiting the Ombudsman's North Bay Regional Office and some of the vast area in the North which the Ombudsman serves from that office. From North Bay the Committee travelled to Timmins, Cochrane and Kapuskasing meeting with community and municipal representatives. Along the way it visited the North Bay Psychiatric Hospital and the Monteith Correctional Centre. From Kapuskasing the Committee travelled to the communities of Attawapiskat, Fort Albany, Moosonee and Moose Factory. There the Committee met with the native councils where informative, but brief, discussions took place concerning the role of the Ombudsman, the function of the Committee and some of the more pressing concerns of the native peoples.

The Committee was accompanied for a portion of its trip by the Temporary Ombudsman, Mr. McArdle. Mr. McArdle's executive assistant and Mr. Gilles Morin, Director of the Ombudsman's Regional Services accompanied the Committee throughout the trip. The Committee wishes to express its deep gratitude to those from the Ombudsman's office who helped organize the Committee's trip. A particular expression of gratitude is given to Mr. Gilles Morin for his invaluable insights and assistance. The Committee also wishes to express its gratitude to its member Mr. Rene Piche, M.P.P., for his advice and assistance in all phases of the project.

While the Committee did gain insights into the unique circumstances of the people living in the North and the special "problems" which confront their every day lives, it has certainly not become expert. The trip was regretfully too brief. The time constraints imposed on the Committee did not afford an opportunity to engage in the kind of in depth discussions required to gain a full knowledge and understanding of the particular needs which the Ombudsman can and should address.

The Committee visited only the Eastern part of Northern Ontario and one of the Ombudsman's Regional Offices. It is vital that, as soon as practicable, it visit the Western part of Northern Ontario.

In the Committee's opinion the trip established the ground work for discussions with the Ombudsman and certain members of his staff which will further extend the services of the Ombudsman to the people of the North. The establishment of direct personal contact between twelve members of the Legislature and the peoples of the various Northern communities is significant. The Committee realized that as a result of those contacts, the special circumstances confronting the Northern regions will require more attention and involvement by this Committee if the office of the Ombudsman is to become as effective as it is in the South.

While it was impossible for the Committee, within the time allotted for the trip, to develop a sufficient knowledge, expertise or sense of matters to formulate any real conclusions or to make substantive recommendations in this report, the Committee nevertheless is of the opinion that certain observations and suggestions should be made. These observations and suggestions will form the basis of the Committee's continuing commitment to the people of Northern Ontario regarding Ombudsman matters and may serve, after further visits to the North and discussions with its people, to form the basis of recommendations.

These observations and suggestions are not made in any order of priority.

1. The current director of Regional Office of the Ombudsman, Mr. Morin, is a person who possesses a passionate concern for Northern Ontario and its native people in particular. The Ombudsman is well served by his presence in the North. The role of the Director could well be expanded to perform more of the Ombudsman functions. Any such expanded role would tend to strengthen the relationship between the office and the communities.

2. The role and functions of the Ombudsman are not generally known by the native peoples in the West coast settlements of Attawapiskat, Fort Albany and Moosonee. Specifically the community leaders do not seem to realize that the Ombudsman is available as a "last resort" to the people after all of the governmental review and/or appeal processes have been exhausted.

3. The Ombudsman has since the inception of the office acknowledged that the native peoples are a particular group of society that he is committed to serve. However, the Ombudsman "presence" in the far Northern native communities is restricted to approximately four visits annually, each lasting one day on average. The Committee recognizes that there are many reasons why these visits have been so restricted, particularly the need for fiscal restraint. However, the Ombudsman should consider other ways to translate his commitment to the native people into a more permanent presence. The hiring of natives to represent the office while living in the native communities may be one solution. An increase in the utilization by the Ombudsman of the services and facilities available at the regional offices of the Ministry of Northern Affairs and members' constituency offices located in northern Ontario could also create more of a permanence to the Ombudsman in the North.

4. The native peoples regard the Ombudsman's Regional Office in North Bay to be practically as remote from their communities as the office in Toronto. If this is an accurate assessment, then it further underscores the need for the Ombudsman to provide a more direct and continuous presence in the native communities. It is very difficult for the Ombudsman and his staff to serve the people of the Province of Ontario with any degree of equality under the present format (Toronto Office and three Regional Offices). The Ombudsman should give consideration to more dispersal of staff to various communities, particularly in the North.

5. Communications between the office of the Ombudsman and inmates or patients in institutions could be more efficient. The Committee is concerned over the length of time passing between the initiation of a complaint by an inmate or patient and the receipt of the Ombudsman's response. The Ombudsman should investigate this matter and take such steps as are available to him to remedy the

situation. Various Committee members have also referred various comments made to them by patients or inmates at the two institutions visited to the Ombudsman without comment or conclusions. The Committee intends to review these matters with the Ombudsman as soon as practicable.

6. Many of the concerns given to the Committee by the native peoples were federal rather than provincial jurisdiction. The problems experienced by the people of Northern Ontario, perhaps more than any other area, bear witness to the need for a Federal Ombudsman.

7. A number of specific concerns expressed by the people of the north although provincial in nature were not currently within the Ombudsman's jurisdiction. The Committee members intend to bring those matters to the attention of the appropriate Ministries concerned in the hopes that the concerns will be addressed.

SCHEDULE 1

SUMMARY OF RECOMMENDATIONS

1. ACCORDINGLY THE COMMITTEE RECOMMENDS THAT THE WORKERS' COMPENSATION BOARD PAY THE COMPLAINANT THE INCREASED PENSION AMOUNT FROM THE DATE HE LEFT CANADA UNTIL SUCH TIME AS IT DECIDES ENTITLEMENT IS NO LONGER APPROPRIATE, BASED UPON A PERSONAL ASSESSMENT OF THE COMPLAINANT EITHER IN CANADA OR IN THE COUNTRY WHERE HE CURRENTLY RESIDES. (Page 15)
2. ACCORDINGLY, THE COMMITTEE RECOMMENDS THAT THE WORKERS' COMPENSATION BOARD REVERSE ITS DECISION OF SEPTEMBER 20TH, 1983 AND GRANT THE COMPLAINANT A TEMPORARY SUPPLEMENT TO HIS PERMANENT PARTIAL DISABILITY AWARD. IT IS UNDERSTOOD THAT THE BOARD RETAINS FULL DISCRETION IN ASSESSING AND QUANTIFYING THE AMOUNT OF SUCH SUPPLEMENT. (Page 17)
3. ACCORDINGLY, THE COMMITTEE RECOMMENDS THAT RECOMMENDATION NO. 23 OF ITS THIRD REPORT BE IMPLEMENTED BY THE MINISTRY OF EDUCATION BY MEANS OF A POLICY OF INSURANCE ON A PROVINCE-WIDE BASIS BEFORE THE END OF 1984. (Page 19)
4. ACCORDINGLY, THE COMMITTEE RECOMMENDS THAT THE AMENDMENT TO THE OMBUDSMAN ACT SET OUT IN SCHEDULE 1 TO THIS REPORT BE INCLUDED IN THE BILL WHICH THE ATTORNEY-GENERAL WILL TABLE IN THE LEGISLATURE AMENDING THE OMBUDSMAN ACT. (Page 23)
5. THEREFORE, FOR THE PURPOSE OF THIS REPORT AND IN FULFILLMENT OF THE COMMITTEE'S TERMS OF REFERENCE IT RECOMMENDS THAT THE MINISTRY OF CONSUMER AND COMMERCIAL RELATIONS (MINISTRY) RECONSIDER THE LAW ON WHICH THE COMPLAINANT'S DECISION WAS BASED AND, WITH HUDAC, TAKE ALL APPROPRIATE STEPS TO AMMEND THE REGULATIONS TO COMPLY WITH THE ONTARIO NEW HOME WARRANTIES PLAN ACT. (Page 28)
6. THE COMMITTEE ALSO RECOMMENDS THAT THE MINISTRY AND HUDAC TAKE APPROPRIATE STEPS TO PROVIDE FOR PAYMENT TO THE COMPLAINANT OF HIS STATUTORY ENTITLEMENT TO COMPENSATION UNDER THE ONTARIO NEW HOME WARRANTIES PLAN ACT. IN THE CIRCUMSTANCES OF THIS CASE THE COMMITTEE CONSIDERS THAT THE SUM OF \$20,000 IS AN APPROPRIATE PAYMENT. (Page 29)
7. THE WORKER'S COMPENSATION BOARD REVOKE ITS DECISIONS OF OCTOBER 29, 1981 AND DECEMBER 23, 1981 AND AWARD THE COMPLAINANT THE PARTIAL COMMUTATION OF HIS PENSION THAT HE REQUESTED. (Page 38)
8. THE WORKERS' COMPENSATION BOARD CANCEL ITS APPEAL BOARD DECISION OF DECEMBER 5, 1973 AND ORDER THAT THE COMPLAINANT BE AWARDED APPROPRIATE BENEFITS. (Page 39)

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Ontario

Select Committee on the Ombudsman

Twelfth Report 1984



Fourth Session, Thirty-Second Parliament
33 Elizabeth II

December, 1984

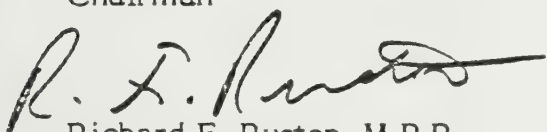
The Honourable John M. Turner, M.P.P.
Speaker of the Legislative Assembly

Sir,

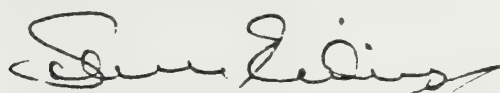
We the undersigned Members of the Select Committee on the Ombudsman
have the honour to submit the attached report.



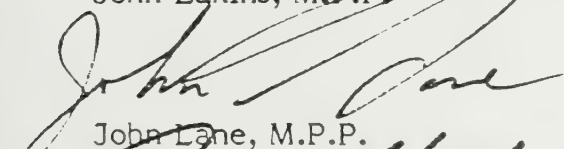
Robert W. Runciman, M.P.P.
Chairman



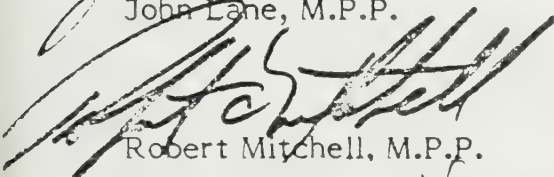
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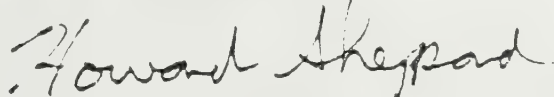
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John Lane, M.P.P.



Robert Mitchell, M.P.P.



Howard Sheppard, M.P.P.



Ron Van Horne, M.P.P.
Vice-Chairman



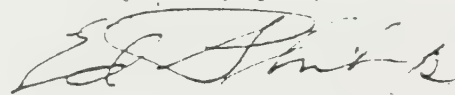
Odoardo DiSanto, M.P.P.



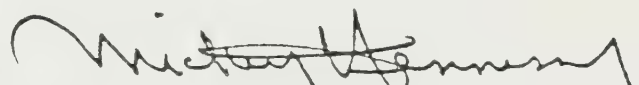
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Robert MacQuarrie, Q.C., M.P.P.



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Mickey Hennessy, M.P.P.

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ON THE
OMBUDSMAN

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| DOUGLAS ARNOTT | Clerk of the Committee |
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TWELFTH REPORT OF THE SELECT COMMITTEE ON THE OMBUDSMAN

PART I Introduction

The Committee wishes to honour the memory of James A. Renwick, Q.C., M.P.P., Member for Riverdale until his untimely death on November 27, 1984 and first Chairman of this Committee. It is too soon to fully comprehend the magnitude of this loss to the Assembly and to the people of Ontario.

Jim Renwick would have felt awkward hearing the superlatives attributed to him in recent days concerning his intelligence, integrity, grace, compassion and contribution to the people of Ontario. The Committee therefore will not repeat those words of praise, true as they are. Instead it wishes simply to say that its members share the deep sense of personal loss. The dedication of this Report to his memory is a small way of acknowledging his contributions to the Office of Ombudsman of Ontario and to this Committee.

The Committee was also saddened at the death of Ontario's first Ombudsman, Arthur Maloney, Q.C. Many words have been spoken and written since his death praising his accomplishments as a lawyer, politician, Ombudsman and humanitarian. In particular, his accomplishments while Ombudsman have yet to be fully recognized and appreciated. He was truly the people's representative. Perhaps that is his greatest legacy.

The Committee has recommended in Part VIII of this Report that the Legislature adopt its Special Report tabled in March, 1983. This Report was prepared by the Committee as a result of the Resolution tabled in the Legislature by the late Jim Renwick and approved unanimously by all members, which dealt with international human rights issues and an appropriate role to be played by this House in those issues. The Committee urges all members to adopt this Special Report. It will serve as a suitable testimony to his memory.

Dr. Hill's approach with the Committee and with senior members of various government organizations who appeared before the Committee, was low-key and non-adversarial. Matters arising which were potentially contentious, were dealt with candidly, openly and willingly. There was no debate whether matters were

properly within the jurisdiction of the Committee. There was no tendency for the Committee or the Ombudsman to "take sides" on any particular issue. The Committee commends the Ombudsman for the style he has adopted. It will foster an even stronger sense of mutual respect which can only benefit the Office of the Ombudsman.

The Committee does not expect that the Ombudsman will agree with it on every issue which is addressed. In fact it is to be expected that the Ombudsman's view on some matters will be different than the Committee or any of its members. However, with the adoption of a co-operative style, the Committee is confident that where matters of disagreement do arise, they can be dealt with in a context of full and frank discussions wherein the Ombudsman and the Committee work together towards an appropriate solution.

The Committee is pleased to report that it has adopted with the Ombudsman and governmental organizations who are involved with "recommendation denied" cases a procedure which clarifies the issues relevant to the Committee's concern and enables the Committee to deal with those issues more efficiently and effectively.

The Ombudsman and the governmental organizations concerned were required to agree upon and prepare a synopsis of each recommendation denied case. Each synopsis contained a statement of facts and issues which the parties agreed were relevant to the Committee's deliberations. Each also contained a statement of the relative positions of the Ombudsman and the governmental organization concerned and the reasons for these positions. The process of preparation of these synopses contributed to a resolution of a number of the outstanding recommendation denied cases. Obviously the requirement that the parties "get together" to prepare a joint statement encourages the settlement process.

The Committee will be employing this procedure whenever it considers recommendation denied cases. The Ombudsman and the governmental organization who will be affected should begin preparing these statements as soon as it becomes apparent that a recommendation will be "denied". In fact the Ombudsman should

consider incorporating this process during the early stage of his investigation of complaints as a possible means of resolving outstanding issues.

After the first half-year, Dr. Hill has decided that his office needs to provide a "faster and better service...throughout the Province." The Committee concurs with this view. There continues to be a need for improvement, particularly in the time taken to process a number of complaints from the public. It is too early to pursue with Dr. Hill the particular methods he intends to employ to make these improvements. It will be a matter of continuing discussion with him.

In his Eleventh Report, Dr. Hill identified some "systemic problems" which in his opinion cause or contribute to certain matters of maladministration within the public service. His comments were limited to three "problems" involving the Workers' Compensation Board. These problems, in his opinion, were having some effect on his office's ability to investigate and otherwise deal with Workers' Compensation Board complaints. The Committee has decided not to deal with these three "problems" in any substantive way in this Report. This is particularly so since the Ombudsman and the representatives of the Workers' Compensation Board intend to engage in discussions towards arriving at an appropriate resolution of the "problems".

The Committee favours the approach taken by Dr. Hill in commenting upon "systemic problems" which he believes are causing or contributing to matters of maladministration within the public service or are otherwise "adversely affecting" his ability to perform his functions under The Ombudsman Act. While the Committee encourages Dr. Hill to make every possible effort to remedy the problems by discussions with representatives of the governmental organization affected, it nevertheless expects that, should those efforts be unsuccessful, he will then report his concerns to this Committee.

Dr. Hill has stated that one of his priorities is to "foster a climate of mediation and conciliation with the Ministries". The Committee understands that he intends to implement an approach that he used when he was Chairman of the Human Rights Commission. However, the Committee would be concerned if Dr. Hill applies

the styles of mediation and conciliation to every aspect of his functions. The roles of Chairman of the Human Rights Commission and Ombudsman of the Province of Ontario are not truly analogous.

As Ombudsman, once his investigation has been completed and he formulates a conclusion and recommendation which support the complainant, he becomes the representative of that complainant in his dealings with the governmental organization, the Office of the Premier, and lastly this Committee. In the Committee's opinion he cannot be true to the roles of mediator/conciliator and the role of the complainants "representative". The Committee of course acknowledges that there are many occasions within the Ombudsman's process where the role of mediator and conciliator can and should be adopted more frequently. Certainly any approach which relieves atmospheres of confrontation and tension is a welcome addition.

In his Eleventh Report Dr. Hill postulated his Bill of Administrative Rights. These are a series of guidelines or "yardsticks" to give the public and the public service an idea of the rights that define the relationship between them in administrative matters. These administrative rights are founded substantially in the United Nations Universal Declaration of Human Rights, something which has been very close and important to Dr. Hill. The Committee is comforted by Dr. Hill's assurance that it will not be used in any way as a substitute for his obligations under Sections 21 and 22 of The Ombudsman Act. Rather they will in many cases serve to clarify or explain the reasons for the exercise of his discretion under those sections.

The Committee met for three weeks in September, 1984. This was the first opportunity for Dr. Hill to participate in the Committee's hearings. It also was the first time that the Ombudsman remained in attendance for most of the Committee's hearings. The Committee commends Dr. Hill for accepting the Committee's suggestion of continuous attendance. The insights gained will undoubtedly assist the Ombudsman and Committee in the future.

PART II Eleventh Report of the Select Committee

(a) Comments and Response of the Ombudsman

Although Dr. Hill has held office only since March, 1984, the Committee was pleased with the seriousness with which he has addressed the matters raised by the Committee in its Eleventh Report.

For some years, the Committee has been concerned over the length of time taken to process a complaint from beginning to end. There has been some improvement in this area - for example, this year 629 cases took more than a year to process, as compared with 921 in the previous year. Dr. Hill, with the assistance of his Executive Director, has implemented a number of measures which may further reduce the time taken to close a file. For example, a manager of administration has been hired to study the ways in which the work of the support staff may be streamlined, an attempt is being made to standardize investigative procedures, and conciliation committees have been instituted. It is hoped that these measures will make the Ombudsman process more productive and effective. The Committee will be reviewing the results of these measures with Dr. Hill at a later time.

The Committee has encouraged the Ombudsman to give consideration to the wider dissemination of staff throughout Ontario, particularly in the north of the province. The Ombudsman is currently addressing this through a study of the methods by which other governmental departments and private organizations have extended their regional services. From the information gathered from this study and from its two new district offices at Kenora and Timmins, the Office will develop its own regional plan, which will reflect the Ombudsman's interest in making itself known to all Ontarians. The Committee will review the plan with the Ombudsman.

Northern Ontario will continue to be a priority in this context for both the Ombudsman and the Committee. The Members returned from the visit to the north of the province with the strong conviction that a more permanent presence was required for the Ombudsman in these remote areas, and most particularly among our native people.

The establishment of offices in Kenora and Timmins may assist people who feel alienated from the office of the Ombudsman. Currently under study, an in-and-out WATTS telephone system covering northeastern and northwestern parts of Ontario may prove to bring the office closer to the people. The emphasis on reaching communities and communicating well with them is evinced by the plan to hire staff who are fluent in both French and English for the northeastern part of the province. Similarly, the hiring of two native summer students and the plan to employ native people on a part-time basis while they continue to live in their communities also reflect this emphasis. In addition, the Ombudsman will be taking out advertising in native people's newspapers. Perhaps most importantly, he will be meeting with people where, in Dr. Hill's own words, "they are comfortable". In the case of native people, these meetings will take place in their communities.

(b) Responses from Governmental Organizations to
Recommendations contained in the Report.

(1) Ministry of the Attorney-General

Recommendation No. 4 of the Report states that:

"The amendment to the Ombudsman Act set out in Schedule 1 to this Report be included in the Bill which the Attorney-General will table in the legislature amending the Ombudsman Act".

The amendment in question is intended to give the Ombudsman and the head of the governmental organization concerned the power to implement an Ombudsman Recommendation that monies be paid to the complainant. It has been acknowledged by all concerned that the amendment in question is best included in the Ombudsman Act rather than the Financial Administration Act.

The Attorney-General has advised the Committee that he is prepared to bring forward a Bill to amend the Ombudsman Act at an early opportunity. His Ministry is currently in the process of preparing a submission for consideration by Cabinet relating to a number of amendments including this one.

At the Attorney-General's suggestion the Committee has agreed to defer any further discussion of this matter until it has been dealt with by Cabinet. The Committee will continue to consult with the Attorney-General on the progress of the amendments.

(2) Ministry of Consumer and Commercial Relations

Recommendation No. 5 of the Report recommended that:

"the Ministry of Consumer and Commercial Relations (Ministry) reconsider the law in which the complainant's decision was based and, with HUDAC, take all appropriate steps to amend the regulations to comply with the Ontario New Home Warranties Plan Act".

Recommendation No. 6 of the Report further recommended that:

"the Ministry and HUDAC take appropriate steps to provide for payment to the complainant of his statutory entitlement compensation under the Ontario New Home Warranties Plan Act. In the circumstances of this case the Committee considers that the sum of \$20,000.00 is an appropriate payment".

These Recommendations were pursuant to the Committee's decision to support Recommendations of the Ombudsman in a matter involving a complainant's attempt to obtain payment from the Ontario New Home Warranties Plan for a portion of monies lost in the purchase and completion of a new home. During the course of his investigation the Ombudsman concluded that Section 6 of the Regulations under the Ontario New Home Warranties Plan Act was invalid as it purported to contradict certain sections of the Act.

The Ministry, subsequent to the Committee's Recommendation, conferred with representatives of the Warranties Program and formulated an amendment to Section 6 of the Regulation as follows:

"A purchaser who has a claim under Clause 14(1)(a) of the Act in respect of a purchase agreement is entitled to be paid out of the Guarantee Fund the amount of all deposits owing by the vendor to the purchaser under an agreement of Purchase and Sale to a maximum of \$20,000.00."

The Committee was advised that this amendment will serve to eliminate the grounds upon which this complainant was refused payment from the Plan. The Committee therefore accepts the Ministry's response to its Recommendation as full compliance.

HUDAC, on the other hand, up to the time of its attendance before the Committee in September, refused to implement the Recommendation directed to it on the grounds that the Committee lacked jurisdiction to enforce such a Recommendation, and in any event, it had been denied some due process of law by the complainant's decision not to appeal the decision of CRAT to the Supreme Court of Ontario. HUDAC however, had paid the Complainant \$5,000.00 of the \$20,000.00 in issue.

That notwithstanding, when the representative of HUDAC and its legal counsel appeared before the Committee they announced that HUDAC had reconsidered its position and agreed to pay the complainant the additional \$15,000.00, thus complying with the Committee's Recommendation. The payment of the additional \$15,000.00 was rationalized by HUDAC on the basis that it was consistent with a finding of the Commercial Registration Appeal Tribunal that the monies constituted a deposit. The Committee does not intend to enter into a debate as to whether or not HUDAC's actions are a direct response to its Recommendation or consistent with a finding of the Commercial Registration Appeal Tribunal. What is important of course is that the substance of the Committee's Recommendation has been satisfied. The representatives of HUDAC are to be commended for their reconsideration of their position regardless of grounds or motives.

(3) Ministry of Education

The Third Report of the Committee recommended that:

"Recommendation No. 23 of its Third Report be implemented by the Ministry of Education by means of a policy of insurance on a Province wide basis before the end of 1984."

Recommendation No. 23 of the Committee's Third Report provided that:

"the Ministry forthwith pursuant to discussions with the insurance industry and other interested parties for the

purposes of developing an appropriate contract of insurance in the indemnity type at a realistic premium which will adequately compensate the pupil for injuries sustained in the case of a pure accident as a result of participation in shop classes and in organized athletic activities."

The Ministry reports that some progress is taking place regarding the provision of insurance of the type referenced in the Committee's Report. Regrettably, there is still apparently some need for further discussions between the Ministry and representatives of the insurance industry. The Committee understands further that no decision has been yet taken as to who will bear the cost of the premium, estimated at approximately four million dollars.

Some members of the Committee have expressed a need to expand the scope of coverage to include any school activities wherein injuries may occur. The Committee sees some merit in this suggestion. The Committee once again urges the Ministry to move as quickly as possible on this issue. The Committee expects that the Recommendation will be implemented before its next hearings commence.

(4) Ministry of Labour - Worker's Compensation Board

(i) Complaint No. 21, Tenth Report of the Ombudsman

Recommendation No. 1 of the Report stated that:

"the Worker's Compensation Board pay the complainant the increased pension amount from the date he left Canada until such time as it decides entitlement is no longer appropriate, based upon a personal assessment of the complainant either in Canada or in the country where he personally resides."

This Recommendation was necessary because in implementing Recommendations No. 12 and No. 13 of the Committee's Tenth Report, the Worker's Compensation Board misinterpreted the intent of Recommendation No. 13 and rescinded the increased pension amount paid to the complainant as of the date that he permanently left Canada. This step was taken by the Board without a personal assessment of the complainant.

The Committee was advised by representatives of the Board that this Recommendation has been implemented. The complainant has been assessed

personally and will continue to receive from the date of the assessment an award of thirty-five percent. The Committee has accepted the Board's response as full compliance with this recommendation.

(ii) Complaint No. 22

In its Eleventh Report the Committee stated as follows:

"In its Tenth Report the Committee recommended that:

'The Worker's Compensation Board reconsider its decision of July 24, 1980 and its decision of November 9th, 1981 with a view to granting the complainant a temporary supplement to his permanent partial disability award on the basis of a full consideration of all relevant evidence and factors'.
(Recommendation 14)

This Recommendation, was framed in identical language to the Recommendation of the Ombudsman. The Committee concluded that in assessing entitlement to benefits under Section 43(5) of the Worker's Compensation Act, the Board was required to determine the threshold question of whether "the impairment of earning capacity of the employee is significantly greater than is usual for the nature and degree of his injury". That question can only be determined after a consideration of all relevant evidence and factors and not solely on the basis of a comparison of current earnings to 75% of pre-accident earnings.

The Board advised the Committee that it had accepted its Recommendation. It subsequently issued a decision in September 20th, 1983 wherein it purported to have reconsidered all of the relevant evidence and factors but denied the complainant any entitlement to a supplementary award under Section 43(5) of the Act.

The Ombudsman has taken the position that the Board has not complied with the Committee's Recommendation since it has failed to award the complainant a temporary supplement. The Ombudsman asserts that the phrase in his Recommendation as adopted by the Committee "with a view to granting the complainant a temporary supplement to his permanent partial disability award" places an obligation on the Board to award such a supplement after its reconsideration of its two previous decisions.

The Board on the other hand, states that it has complied with the 'letter' of the Recommendation. It believes that its only obligation was to reconsider the

decisions in question leaving the Appeal Board Panel the full discretion to decide the question of entitlement.

The Ombudsman asserts that even though the language of his recommendation is lacking in precision as to the desired result, it was nevertheless made abundantly clear to the Board both during the investigative process and during the hearings before the Select Committee that the Recommendation required the award of some temporary supplement. In the Ombudsman's opinion, the only discretion that was left to the Board was the determination of the quantum of the supplement, not whether one should be paid.

The Committee is thus placed in a position of deciding whether all of the circumstances warrant a restatement of its recommendation so as to best serve the intention of the Ombudsman and of the Committee members who decided to support the Ombudsman in this case. A review of all of the relevant documentation and transcripts of the proceedings has not revealed any lack of understanding and appreciation by the representatives of the Board of the real intention of the Ombudsman's Recommendation. The Board appears to have adopted a technical interpretation of the Recommendation and relies upon actions based upon that technical interpretation as constituting total compliance.

The Committee has decided that it should in these circumstances clarify its Recommendation. This decision does not prejudice the Board in any way since at all material times it was aware of the desired result. If the Committee accepted the Board's actions as full compliance with the Recommendation, it would seriously diminish the effectiveness of the Ombudsman and might well be a party to injustice to the complainant whose claim for a temporary supplement had in substance been supported by both it and the Ombudsman.

ACCORDINGLY, THE COMMITTEE RECOMMENDS THAT THE WORKER'S COMPENSATION BOARD REVERSE ITS DECISION OF SEPTEMBER 20TH, 1983 AND GRANT THE COMPLAINANT A TEMPORARY SUPPLEMENT TO HIS PERMANENT PARTIAL DISABILITY AWARD. IT IS UNDERSTOOD THAT THE BOARD RETAINS FULL DISCRETION IN ASSESSING AND QUANTIFYING THE AMOUNT OF SUCH SUPPLEMENT. 1"

The Vice-Chairman, Appeals, of the Worker's Compensation Board advised the Committee in September that the Board regrets that it cannot comply with the Committee's Recommendation. This statement was made before the

legislature had debated the Committee's Eleventh Report for adoption. Subsequently the legislature did debate the Committee's Report and by motion adopted it, including Recommendation No. 2. The Committee has been subsequently advised that the Board still does not intend to implement the Recommendation.

The Committee is most disturbed over these developments. The Board's position runs contrary to commitments given to it and the legislature by the former Chairman of the Board that the Board would implement without question any Recommendation of the Committee it made regardless of whether it was adopted by the legislature.

The Board's position further appears to be contrary to a procedure formulated by the Honourable Dr. Robert Elgie Q.C. M.P.P., former Minister of Labour, that before the Worker's Compensation Board responds to this Committee that it does not intend to implement one of its Recommendations, the Board must first confer with the Minister so that the issues can be thoroughly canvassed. It does not appear that the Board ever did confer with the Minister although the Board indicated that it believed that he concurs with the Board's decision.

It also runs contrary to the position of Mr. Warrington given to the Committee that if the legislature adopts the Recommendation, which it has, he would recommend to the Corporate Board that it be implemented.

It is premature for the Committee to formulate any final position or make any final Recommendations in this matter. Before doing so it intends to meet with the appropriate representatives of the Worker's Compensation Board, the Minister of Labour and the Ombudsman so that the respective positions can be fully set forth. When that has occurred the Committee will then report to the House with Recommendations on what courses of action are appropriate.

PART III Eleventh Report of the Ombudsman, April 1, 1983 to March 31, 1984

(a) Statistical Analysis

A recurrent concern of the committee has been the reduction of time required to handle cases; this concern remains. With a number of specific changes in mind (e.g. the establishment of a deadline system for drafting, typing, revising and approving of draft reports), the Ombudsman hopes to have a new system in place shortly, whereby this time period will, in the words of Volume I of his 1983-84 Annual Report, be "significantly improved". He has also assured the Committee "That the trend towards greater efficiency be continued by this Office will be a priority while I am Ombudsman." The Committee therefore deferred substantial consideration of these statistics until Dr. Hill has had an opportunity to implement his ideas in this area.

(b) Recommendations in previous Ombudsman Reports and/or Select Committee Reports in respect of which it is expected that some further action will be taken by the Governmental Organization affected.

(i) Ministry of Government Services

In its Third Report (Recommendation No. 24), the Committee provided that the Ministry should table appropriate legislation removing the present restriction on total current earnings of a provincial superannuant. In its Eleventh Report it urged the Ministry and government to table an amendment to s. 16 of the Public Service Superannuation Act so as to deal with this issue as quickly as possible.

During its most recent deliberations, however, the Committee was informed that the government has decided to postpone any decision regarding this amendment on the grounds that the issue is part of the larger one of mandatory retirement under the new Charter of Rights and Freedoms. On May 25, 1984, in the Legislature the Hon. George Ashe stated that "To look at section 16 of this act in isolation would not be looking at the total issue of mandatory retirement. It has been put aside until that occurs."

It is not clear why a projected analysis of mandatory retirement should halt progress on the Committee's recommendation; the Committee therefore reiterates that it will continue to pursue this matter with the Ministry until the amendment is passed.

(ii) Ministry of Health

Recommendation No. 7, Committee's Tenth Report

(Insured Benefits)

In a letter dated June 19, 1984 from the Assistant Deputy Minister to Committee counsel, the Committee was informed that the General Manager of OHIP has fulfilled his undertaking to reimburse the two claimants in this matter, thereby satisfying that part of the Committee recommendation. As regards the rest of the recommendation, in its Eleventh Report the Committee accepted a suggestion from the Ministry that annual meetings be held between the Ministry and the Ontario Dental Association to ensure that the relevant OHIP fee schedule is updated so as to cover all procedures performed by dental surgeons in hospitals. In accepting this suggestion as compliance with its recommendation, the Committee relied upon the assurances of the Assistant Deputy Minister of Health that this process would accomplish what was intended with the recommendation.

During its deliberations this fall, the Committee relied upon the Assistant Deputy Minister's letter of June 19, 1984, in which it is stated that negotiations between the Ministry and the Ontario Dental Association have been completed and a new OHIP Dental Schedule of Benefits will be issued retroactive to April 1, 1984. The Independent Consideration code included in the Schedule will allow OHIP to pay for recognized hospital/dental procedures that are not yet listed in the fee schedule. The Committee concludes that its recommendations have been implemented.

Recommendation No. 27, Committee's Third Report;
Recommendation No. 1, Committee's Sixth Report
(Public Hospitals Act criteria applicable to
applications for appointment to a hospital medical staff)

In its Eighth Report the Committee reminded the Minister of Health "that to the extent that the Council of Health identifies appropriate legislative change and so recommends to the Minister, the Committee will view these legislative changes as necessary to fully comply with the recommendations in its Sixth Report."

As of its Eleventh Report, the Committee was still awaiting the enactment of regulations provided to it in November, 1982. As of this report, an amendment to Regulation 865 under the Public Hospitals Act, requiring hospitals to establish criteria for appointments, has not yet been passed. The head of the legal branch of the Ministry has assured the Committee that the delay has resulted from the need to revise the entire regulation and that the amendment will be passed shortly.

As far as the Ministry's failure to receive submissions from the public regarding amendments to the Act and the regulations is concerned, the Committee, without preferring the position of the Ministry or the Ombudsman, has decided not to actively pursue the matter further.

Detailed Summary No. 40, Ombudsman's Third Report
(Nursing Homes Act)

The interim arrangement accepted by the Committee on the understanding that the Nursing Homes Act would be amended in the future seems to be working, despite problems that arose in connection with two calls for proposals. The Ministry has assured the Committee that the situation has been remedied.

The Committee notes, however, that it is still awaiting amendments to the legislation and will continue to monitor the Ministry's response to its recommendation.

(iii) Ministry of Municipal Affairs and Housing
Ministry of Housing (Recommendation 3) Eighth Report of the
Select Committee (Ontario Housing Corporation Field Manual)

The Committee has decided to assume that amendments currently being made to the OHC Field Manual will conform with recommendations made in its earlier reports. It feels that it is reasonable to do so for two reasons. In the first place, during the deliberations for its Eleventh Report, the General Manager of the Corporation gave assurances that it would be taking the Committee's concerns into account and, in particular, would monitor any problems with the new internal review procedure instituted in local housing authorities. In the second place, any problems with OHC policy and with the implementation of this policy by individual housing authorities will be brought to the Committee's attention through the Ombudsman. The Committee is thus of the opinion that the matter has been concluded.

(iv) Ministry of Treasury and Economics

In Recommendation 34 of its Third Report, the Committee recommended (at that time, to the Ministry of Government Services) that the Audit Act and the Financial Administration Act be amended to provide that, if the Ombudsman makes a recommendation for a money payment and that recommendation is accepted by the governmental organization, a lawful authority is created for such money to be paid out of the Consolidated Revenue Fund.

In its Eleventh Report the Committee reported that a proposed amendment to the Ombudsman Act has been agreed upon as a practical solution to the matter. The recommendation was made that it be included in the bill on which the Ministry of the Attorney General is currently working.

The Attorney General has stated that recommendations for these amendments to the Act would shortly be placed before Cabinet. The Committee therefore expects to be dealing with them in the very near future.

(v) Ministry of Labour - Workers' Compensation Board
Committee's Third Report, Recommendation No. 31

In its Third Report the Committee recommended that the Worker's Compensation Act be amended to provide for statutory authority to recover or write off overpayments made to claimants.

There are currently before the Legislature amendments to the Act, and one of these addresses the Committee's concerns. When in force, section 55(2) will provide that:

The Corporations Act does not apply to the corporation and, subject to the provisions of this Act, the corporation shall have the capacity and powers of a natural person.

With this section the Board is given the power to use all the legal means available to a natural person to recover or write off overpayments. When the legislation is in place, the Committee's recommendation will have been fully satisfied.

Committee's Tenth Report, Recommendation 9;
Committee's Tenth Report, Recommendation 10
(Attendance Allowances)

In its Eleventh Report the Committee reminded the Board that to resolve this issue the Committee had accepted three suggestions made by representatives of the Board. First, if the complainant's wife confirms that she intends to obtain full-time employment, the Board would pay the cost of a person or persons to attend the complainant in her absence. Secondly, and in any event, the Board would immediately assemble a treatment team from their Head Injury and Neurology Clinic to meet with the complainant's family physician so as to establish the actual attendance needs of the complainant. Thirdly, the Board would, at its expense, take all necessary steps to provide an individual to attend the complainant and to render the necessary attendance allowance.

In September of this year the Board reported to the Committee that a rehabilitation counsellor was assisting the complainant's wife to re-enter the workforce. When her re-entry has been effected, the Board will provide a person to look after the complainant on a full-time basis. Both the Committee and the Ombudsman were in agreement that the Board had implemented the matters that the Committee had addressed.

Committee Report 7; Committee Report 10
(Policy of Benefit of Doubt)

In its Tenth Report the Committee recommended that:

The Worker's Compensation Board reconvene a hearing on this matter and consider the evidence of the complainant's family physician and the psychiatrist retained by the Ombudsman first hand and thereafter decide whether the policy of benefits should be applied.

The Board reported that it had held such a hearing and that the evidence of the complainant's physician and of the psychiatrist retained by the Ombudsman had been heard. The decision went, once again, against the complainant. The Board did not hear first-hand evidence from the medical referee.

By not having the medical referee appear before it, the Board has relied on technical compliance with the Committee's recommendation. Although recognizing that the compliance is merely technical, the Committee has decided not to pursue the matter any further.

PART IV Recommendations denied by Governmental Organizations as Reported in the Eleventh Report of the Ombudsman

The Ombudsman's Eleventh Report listed nineteen recommendation denied cases outstanding as of the date of its release. Subsequently in September, 1984, the Ombudsman tabled a special report of an additional recommendation denied case involving the Workers' Compensation Board. These twenty cases represent more than double the recommendation denied cases ever reported by the Office of the Ombudsman in any given year.

To the credit of the Ombudsman and the various governmental organizations concerned, by the time the Committee commenced its hearings in September, eight of those cases had been resolved whereby the governmental organizations affected accepted the recommendations of the Ombudsman. For the remaining unresolved cases, the Committee continued its procedure of deliberating upon each immediately after it has considered relevant matters with the Ombudsman and the governmental organization representatives concerned. Where the Committee, as a result of its deliberation, decided to support the recommendation of the Ombudsman, it announced its decision. The Committee is pleased to report that with all but one of the recommendation denied cases that it supported involving the Workers' Compensation Board, the Board has already accepted the Committee's decision and taken steps to implement the recommendations.

To fulfill its mandate, the Committee will in this Report set forth the precise recommendations which it formulated during its deliberations.

(i) Ministry of Correctional Services

Detailed Summaries No. 1 and 2

The recommendations contained in these two cases were accepted by the Ministry between the time the Ombudsman tabled his report in the Legislature and the commencement of the Committee's hearings.

(ii) Ministry of Government Services
Public Service Superannuation Board

Detailed Summary No. 3

This complaint arose from advice given to the complainant in 1966 by the Director of the Pension Funds Branch (now Employee Benefits Branch, Ministry of Government Services), in respect of consequences which would flow from a transfer of his pension credits with the Public Service Superannuation Fund (PSSF) to the Ontario Municipal Employees Retirement System (OMERS), upon the acceptance by the complainant of a promotion within the Public Service.

From 1958 to 1966 the complainant was employed in a position making pension contributions to PSSF. In 1966 he was offered a promotion to a new position, wherein he would be required to contribute to OMERS and transfer his pension credits accordingly.

The Ombudsman, as a result of his investigation, concluded that the Director of the Pension Funds Branch failed to supply complete information to the complainant, through his employer, with respect to the consequences of the complainant transferring his pension credits; that the communications passing between the Director and the complainant's employer clearly included the assumption by the Director of some responsibility to advise the complainant on the merits of transferring his pension from PSSF to OMERS; and that the advice given was incomplete as it failed to alert the complainant that, upon transfer of pension benefits, he would lose the employer's contributions made to PSSF and that he would lose the entitlement to a pension calculated on his average highest three years of earnings. (The OMERS pension was then based on career average earnings.)

The Ombudsman accordingly recommended that the complainant be paid reasonable compensation for his loss by either the Ministry of Government Services or the Public Service Superannuation Board.

The Committee agrees with the conclusions of the Ombudsman, that the Director, having assumed the responsibility for advising the complainant on the

transfer of his pension credits, failed to inform him of all of the adverse consequences. However, on the facts disclosed by the Ombudsman's investigation and during the Committee hearings, there does not appear to be any evidence that the consequences if disclosed by the Director, would have affected the complainant's decision to accept the position of promotion.

More importantly, no one from the Office of the Ombudsman or remarkably from the Public Service Superannuation Board was able to advise the Committee what the comparative pension benefits would be today, under both pension plans, based on relevant salaries of his "old" and "new" position. In other words, the Ombudsman was unable to determine that the complainant had in fact suffered any loss as a result of the Director's omission. Granted, the Ombudsman attempted to quantify his recommendation by the amount of the employer's contribution which had accumulated from 1958 to 1966 and applying some appropriate interest rate to date. That however begs the question that the pension benefits available today to the complainant are less than what he would now be entitled to under his former pension plan, even allowing for the loss of employer's contributions. That was not established.

Accordingly, the Committee is unable to support the recommendation of the Ombudsman. To do so would be to support the payment of monies to compensate for a loss which had not been established.

(iii) Ontario Northland Transportation Commission

Detailed Summary No. 4

This matter involved a complaint by a former employee of the Ontario Northland Transportation Commission, that the Commission failed to provide adequate pension benefits to him upon his retirement.

The Ombudsman's investigation disclosed that the complainant had been working for a company for 32 years when in 1973 it was acquired by the Commission. Shortly thereafter, the complainant, along with other management staff members were permitted to make contributions to the Ontario Northland

Pension Plan. The Commission at the same time gave a commitment to the complainant, among others, that he would not receive less under the Ontario Northland Plan than he would under his former employer's retirement policy. Less than five years after he began making contributions to the Northland Plan, the complainant retired due to ill health. On retirement he was paid an amount equal to the former employer's retirement policy and a refund of contributions he had made to the Northland Plan with interest. He was not entitled to a full vesting of the Northland Pension Benefits because he had not served five years with the Commission as the Plan required.

As a result of his investigation, the Ombudsman concluded that the Commission had failed to provide reasonable pension benefits to the complainant, a long standing employee of the company acquired by the Commission. The Ombudsman reasoned that it was inequitable not to apply the spirit of Section 29 of the Pension Benefits Act to the complainant's situation just because the former employer did not provide a benefit which could be defined as a pension.

The Ombudsman accordingly recommended that the complainant be paid a lump sum representing the pension benefits he would have received from the date of his retirement to the present time as set-off against the sum, plus interest, that he already received upon his retirement in 1979. The Ombudsman further recommended that the complainant should continue to receive his monthly pension benefits until death. Regrettably, before the Committee considered this matter, the complainant died. The only issue therefore remaining for the Committee to consider was entitlement to the lump sum in question, which the Committee understands the Ombudsman has quantified at approximately \$12,000.00.

The Commission declined to implement the Ombudsman's recommendation on the grounds that it lacked the legal authority to do so; that it had in fact provided allowances to the complainant on and before his retirement which were reasonable in the circumstances. In fact, the Committee was informed by the Commission that before his retirement the Commission "gifted" the complainant four months sick leave credits. Further it offered him a less responsible position in order that he might continue his employment at least until his

pension vested and upon his death, his widow became entitled to the proceeds of a life insurance benefit of approximately \$48,000.00. The Committee notes that under his former employment, the complainant would not have received the sick leave credits as noted or any life insurance benefit. In summary, the Committee understands that the complainant and his estate received benefits more than double those that he would have received under his former employer.

In the circumstances, the Committee is unable to support the recommendation of the Ombudsman, that the complainant, (now his estate), is entitled to any further payments. The actions of the Commission in dealing with this complainant were reasonable in the circumstances.

(iv) Ministry of Colleges and Universities

Detailed Summaries No. 5 and 6

The Ministry accepted the recommendations of the Ombudsman in these cases before the Committee commenced its hearings in September.

(v) Ministry of Municipal Affairs and Housing

Detailed Summary No. 7

The Ministry accepted the Ombudsman's recommendation in this case before the Committee commenced its hearings on the matter in September.

Detailed Summary No. 8

Remarkably this involves the North Pickering matter. The Committee boldly asserted in its last Report that North Pickering was finally at an end. The creative talents of the Office of the Ombudsman have proved the Committee to be wrong.

The Ombudsman asserts that the complainant in this case, a former land owner who sold his property to the expropriating authority prior to expropriation, is entitled to be compensated on the same basis as the 95 former land owners that were included in the "settlement" reached between the Minister of Housing and the

Ombudsman and reported on by the Committee in its last Report. (See Report #11, Pages 29 to 32). Although the Ombudsman has not conducted a specific investigation into this matter, he has nevertheless concluded that the substance of this complaint is "typical of the majority of North Pickering complaints". Accordingly he recommended that the complainant be included in the revised settlement proposal for North Pickering concluded by the Ministry and the Ombudsman, and that the complainant be paid additional money for his land in accordance with its terms. The Committee understands that the recommendation contemplates a payment of approximately \$236,000.00.

The Ministry has declined to implement the Ombudsman's recommendation. It asserts that the complaint is not typical of the North Pickering complaints; that the complainant is recognized as an expert in the field of expropriation and land compensation law, having written and co-authored certain texts and manuals in that field; and that the complainant is analogous to the 18 complainants who were excluded from the Ministry settlement proposal and whom this Committee decided should not receive any further compensation.

The Committee does not support the recommendation of the Ombudsman in this matter. The Committee does not believe that this complainant is entitled to further compensation.

(vi) Ministry of the Solicitor General

Complaint Summary No. 9

The Ministry accepted the Ombudsman's recommendation in this case before the Committee's hearings began in September.

(vii) Ministry of the Environment

Detailed Summary No. 10

This matter concerns the issue whether the complainant is entitled to claim and in the appropriate circumstances be awarded, interest on monies found due and paid to him pursuant to the Public Works Creditors Payment Act.

The facts of this matter are not relevant. The Ombudsman after conducting his investigations concluded that the Minister of the Environment was mistaken in concluding that he does not have the authority to pay interest under the Public Works Creditors Payment Act and further that the Minister unreasonably exercised his discretion in rejecting the complainant's claim for interest in this matter.

The Ombudsman accordingly, recommended that the decision of the Minister to accept the recommendation of the adjudicator not to pay the claim for interest made by the complainant be cancelled and that the Minister accept and consider the claim for interest as one properly made under the provisions of the Public Works Creditors Payment Act. The Committee understands the Ombudsman intends by this recommendation that the Minister accept the claim for interest as one properly made pursuant to the Public Works Creditors Payment Act and consider the claim on its merits. The Ombudsman does not intend by these recommendations that the Minister pay the complainant interest without first considering the merits of the claim. The Committee further understands that the question of the merits includes a consideration of whether the original contract between the parties stipulated a claim for interest, whether the complainant's charge of interest is unilateral and whether he at any time waived or released the Ministry from any such claim for interest.

The Ministry has declined to accept the Ombudsman's recommendations for reasons which the Committee understands to be based on the merits of the claim, rather than on the legal issue of whether interest is payable by the Minister under the Act.

The Committee accepts the recommendations of the Ombudsman in this case. Not only does the Committee agree that the Minister has the discretion to award a payment of interest under the act, but Ministry representative appearing before the Committee confirmed that authority as well. The Committee is mindful that the Ombudsman's recommendations do not include an automatic payment of interest. The significant issue of the recommendation is that such a claim be considered on the merits.

ACCORDINGLY, THE COMMITTEE RECOMMENDS THAT:

- (A) THE MINISTER OF THE ENVIRONMENT ACCEPT IN PRINCIPLE THAT THE CROWN MAY, IN THE APPROPRIATE CIRCUMSTANCES, PAY A CLAIMANT INTEREST DUE PURSUANT TO A TERM OF A CONTRACT WITH A CONTRACTOR; AND
- (B) THE MINISTER OF THE ENVIRONMENT CONSIDER THE MERITS OF THE COMPLAINANTS CLAIM FOR INTEREST OWING ON THE PRINCIPAL AMOUNT IN QUESTION AND FORMULATE A DECISION WHETHER OR NOT TO PAY SUCH CLAIM.₂

The Committee intends that this latter recommendation requires that the recommendation of the adjudicature in this matter be cancelled.

(viii) Ministry of Labour - Workers' Compensation Board

(a) Detailed Summary No. 11

In this matter after conducting his investigation, the Ombudsman recommended that the Workers' Compensation Board revoke its previous relevant decision and grant the complainant entitlement to benefits for a disablement arising out of and in the course of her employment. The Committee after considering this matter with the Ombudsman and representatives of the Board, deliberated in camera and decided to support the recommendation of the Ombudsman.

The Workers' Compensation Board has already informed the Committee and the Ombudsman that it has accepted the Committee's decision and will implement the recommendation accordingly. THEREFORE, FOR THE PURPOSE OF FULFILLING ITS MANDATE, THE COMMITTEE RECOMMENDS THAT THE WORKERS' COMPENSATION BOARD REVOKE ITS PREVIOUS DECISION AND GRANT THE COMPLAINANT ENTITLEMENT TO BENEFITS FOR DISABLEMENT ARISING OUT OF AND IN THE COURSE OF HER EMPLOYMENT.₃

(b) Detailed Summary No. 12

In this case, after conducting his investigation, the Ombudsman recommended that the Appeal Board Panel of the Workers' Compensation Board revoke its decision of January 16, 1981 and grant the complainant entitlement to compensation benefits for his disability which led to the amputation of his leg. The Committee, after considering this matter with the Ombudsman and representatives of the Workers' Compensation Board deliberated in camera and decided to support the recommendation of the Ombudsman. The Workers' Compensation Board has already informed the Committee and the Ombudsman that it accepts the Committee's decision and will implement the recommendation.

ACCORDINGLY, TO FULFILL ITS TERMS OF REFERENCE THE COMMITTEE RECOMMENDS THAT THE APPEAL BOARD PANEL OF THE WORKERS' COMPENSATION BOARD REVOKE ITS DECISION OF JANUARY 16, 1981 AND GRANT THE COMPLAINANT ENTITLEMENT TO COMPENSATION BENEFITS, BOTH TEMPORARY AND PERMANENT, FOR THE DISABILITY RESULTING FROM THE LOSS OF HIS LEG.⁴

(c) Detailed Summary No. 13

The recommendation of the Ombudsman in this case was accepted by the Workers' Compensation Board before the Committee's hearings in September began.

(d) Detailed Summary No. 14

After concluding his investigation in this case, the Ombudsman recommended that the Appeal Board Panel of the Workers' Compensation Board revoke its decision of September 15, 1981 and restore to the complainant entitlement to benefits for the broken leg he received on December 21, 1979. The Committee after considering this matter with the Ombudsman and representatives of the Workers' Compensation Board deliberated in camera and decided to support the Ombudsman's recommendation. Subsequently the Workers' Compensation Board advised the Committee and the Ombudsman that it accepted the Committee's decision and would implement the recommendation.

ACCORDINGLY, TO FULFILL THE COMMITTEE'S TERMS OF REFERENCE, IT RECOMMENDS THAT THE APPEAL BOARD PANEL OF THE WORKERS' COMPENSATION BOARD REVOKE ITS DECISION DATED SEPTEMBER 15, 1981 AND RESTORE TO THE COMPLAINANT ENTITLEMENT TO BENEFITS FOR THE BROKEN LEG HE SUFFERED ON DECEMBER 21, 1979.⁵

(e) Detailed Summary No. 15

This complaint arose out of a decision of an Appeal Board Panel of the Board in October, 1978, disallowing a claim for payment of temporary total compensation benefits for the period in question.

After completing his investigation, the Ombudsman concluded that the Appeal Board Panel in question was unreasonable in deciding that the complainant was not entitled to temporary partial benefits for the period in question. He accordingly recommended that the Board revoke its decision and award the complainant temporary partial benefits for the subject period.

The Board declined to implement the recommendation on the grounds that the issue of temporary partial benefits was not before it when the appeal was heard in October, 1978 and that because the issue was not considered or decided by it then the Ombudsman lacks jurisdiction to formulate any conclusions or make any recommendations on that issue. In other words, the Board takes the position that it is premature for the Ombudsman to investigate the issue of "partial" benefits unless and until the Board deals with that issue on appeal.

The Ombudsman maintains that the Appeal Board Panel had all relevant evidence available to it in October, 1978 and ought to have considered all issues of compensation referable to the complainant. The Ombudsman further maintains that to require the issue of temporary partial benefits to work its way through the Workers' Compensation Board system before he can deal with it, will cause unnecessary delay to the complainant.

The Committee notes, however, that since the creation of the office, the Ombudsman has investigated matters involving entitlement to compensation only

after they had been dealt with by Appeal Board Panels of the Workers' Compensation Board. This recommendation appears to be an attempt to change that longstanding practice. It is an attempt to require Appeal Board Panels to deal with all issues that are or should be raised on appeals (analogous to the legal principle of res judicata) and an attempt by the Ombudsman to acquire jurisdiction to investigate complaints relating to decisions made at levels below the Appeal Board.

The Committee notes that the Workers' Compensation Board had fixed a date for an Appeal Board Hearing of the temporary partial disability issue.

The Committee is unable to support the Ombudsman's recommendation in this case. The Committee has in effect been asked to endorse a change involving investigation of decisions of the Workers' Compensation Board without appropriate prior notice to or discussions between the Ombudsman and representatives of the Board. This attempt to unilaterally change the rules would seem to run counter to Dr. Hill's philosophy of mediation and conciliation. If Dr. Hill believes that there is merit in some change in the practice involving the Board decisions then, in the Committee's opinion the appropriate way of pursuing those changes initially is with Board representatives.

(f) **Detailed Summary No. 16**

This complaint arose from a decision of an Appeal Board Panel of the Workers' Compensation Board in July, 1977 denying the complainant's claim for compensation for disabilities said to have arisen from an accident at work in August, 1975.

The Ombudsman's investigation consisted mainly of a consideration of various competing medical opinions on whether or not the complainant had suffered a back disability as a result of the 1975 accident. It disclosed that the complainant had a history of back injuries and surgery prior to the August, 1975 accident. Subsequent to the accident he suffered continuing symptoms and underwent back surgery in 1977.

The Ombudsman concluded that the weight of medical evidence available favoured a finding that the accident did cause certain disabilities which appeared in 1976 and which required the 1977 surgery. He further concluded that the Workers' Compensation Board should not have deemed conclusive a report of the medical referee which was obtained subsequent to the Appeal Board decision of July, 1977.

Accordingly, the Ombudsman recommended that the Appeal Board revoke its decision and grant the complainant entitlement to compensation benefits on the basis of all the evidence before it. The Committee understands that the Ombudsman intends by this recommendation that the complainant be entitled to temporary benefits while he recovered from the 1977 surgery plus a permanent disability award assessment.

The Board has declined to implement the Ombudsman's recommendation. It is of the opinion that the evidence for and against the finding of a cause or relationship between the accident at work in 1975 and the occurrence of the symptoms in 1976 is not approximately equal in weight. In other words, the Board does not believe that its policy of benefit of the doubt has application in this case. The Board further is of the opinion that the medical referee's report is conclusive and accordingly binding on the Board.

The Committee has already advised the Workers' Compensation Board that it concurs in the conclusions reached by the Ombudsman that the complainant is entitled to compensation for some of the symptoms he presently displays. However, the Committee does not agree that the complainant should be compensated for all of the symptoms as the Ombudsman's recommendation seems to indicate.

ACCORDINGLY, THE COMMITTEE RECOMMENDS THAT THE APPEAL BOARD PANEL OF THE WORKERS' COMPENSATION BOARD REVOKE ITS PREVIOUS DECISIONS AND GRANT THE COMPLAINANT ENTITLEMENT TO COMPENSATION FOR SUCH SYMPTOMS AS A FURTHER REVIEW OF ALL MEDICAL EVIDENCE INDICATES IS APPROPRIATE.⁶

By this recommendation the Committee intends that the complainant be compensated by benefits in some amount. However, it is prepared to leave the matter of the assessment of the nature and extent of the disability to the Workers' Compensation Board.

The Committee does however refer the Board to the evidence of a Dr. A relied upon by the Ombudsman in support of his recommendation who in his medical report dated October 18, 1978 stated that:

"There is not doubt that a man with his history of back problems would have difficulty with job duties that require bending, walking and lifting. However, these movements would aggravate both the pre-existing non-compensable conditions as well as the pre-existing compensable conditions equally".

The Workers' Compensation Board has subsequently advised the Committee that it has some difficulty in settling upon the practical application of the Committee's recommendation. It has accordingly requested certain advice and direction of the Committee which has been given. As of the writing of this report, the Committee has not been advised by the Workers' Compensation Board whether and to what extent it intends to implement this recommendation.

The Committee will of course pursue this matter with the Board at the next available opportunity.

(g) Detailed Summary No. 17

After concluding his investigation in this case, the Ombudsman recommended that the Appeal Board Panel of the Workers' Compensation Board revoke its decision of February 9, 1982 and acknowledge entitlement for disabilities he found as a result of his investigation, as being related to the complainant's compensable injury of April 14, 1967. The Committee understands that recommendation would entitle the complainant to temporary benefits for the period relating to certain surgery occurring in 1969 and further for the period of certain alleged acute disability occurring in 1979 and further to a permanent disability assessment.

The Committee, after considering this matter with the Ombudsman and representatives of the Workers' Compensation Board, deliberated in camera and decided to support the conclusion of the Ombudsman that the condition of the complainant, known as Carpal Tunnel Syndrome was related to and caused by the compensable accident in 1967. However, the Committee is unable to support the recommendation of the Ombudsman as worded. The language of the recommendation in the Committee's opinion, might not achieve the desired result of providing compensation for the complainant in accordance with the nature and extent of the disabilities. ACCORDINGLY, THE COMMITTEE RECOMMENDS THAT THE APPEAL BOARD PANEL OF THE WORKERS' COMPENSATION BOARD REVOKE ITS DECISION DATED FEBRUARY 9, 1982, AND AWARD THE COMPLAINANT ENTITLEMENT FOR THE PERIOD OF RECUPERATION FOLLOWING THE SURGERY IN 1969.⁷

THE COMMITTEE FURTHER RECOMMENDS THAT THE WORKERS' COMPENSATION BOARD ASSESS THE COMPLAINANT FOR ANY PERMANENT DISABILITY CAUSED BY THE CARPAL TUNNEL SYNDROME REQUIRING THE SURGERY IN 1969, AND COMPENSATE THE COMPLAINANT FOR ANY DISABILITY SO IDENTIFIED.⁸

The Committee has been advised by the Workers' Compensation Board that it accepts the recommendations and has already taken the steps to implement same.

(h) Detailed Summary No. 18

The recommendation of the Ombudsman in this case was accepted by the Workers' Compensation Board before the Committee's hearings began in September.

(i) Detailed Summary No. 19

This complaint concerns a decision of an Appeal Board panel of the Worker's Compensation Board dated August 4, 1978 denying the complainant entitlement to compensation for a psychological condition said to have existed between September, 1976 and February, 1983 and to have been caused by an industrial accident occurring in July, 1974.

A substantial part of the Ombudsman's investigation was taken with a consideration of various competing medical opinions concerning the issue whether the psychological disability suffered by the complainant related to the accident in question. The Ombudsman ultimately accepted the medical opinions that supported a causal relationship between the psychological disability and the accident at work and accordingly concluded that the Appeal Board by its decision of August 4, 1978 unreasonably denied the complainant an award for psychological disability. He accordingly recommended that the Appeal Board revoke its decision of August 4, 1978 and grant the complainant a provisional disability award for a psychological disability from September 1, 1976, the date upon which certain temporary total disability benefits were terminated, until February 18, 1983, the date of the report of Dr. A, a psychiatrist who found that the complainant was not then suffering any psychological disability. The Committee understands the Ombudsman's recommendation intends a partial award for the period from September 1, 1976 to February 18, 1983.

The Workers' Compensation Board has declined to implement the Ombudsman's recommendation, substantially because, in its opinion, there was no evidence, particularly any medical opinion, that establishes any psychological disability existing during the period covered by the Ombudsman's recommendation. In fact the date of the latest psychiatric report relied upon by the Ombudsman is December, 1975, prior to the date that the Ombudsman believes that the benefits should begin.

The Committee is unable to support the recommendation of the Ombudsman in this case. Upon its review of the relevant evidence in this case it was unable to identify any evidence that established or inferred that a psychological disability did exist between September, 1976 and February, 1983. In fact the only medical evidence that appears to exist during this period is from two psychiatrists who rendered opinions to the Board in 1978 that there was no psychological disability existing which could be related to the accident in question. In the Committee's opinion, to ignore those two opinions given during the critical period, would be to stretch the application of the policy of the benefit of the doubt beyond any appropriate limit.

(j) Special Report of the Ombudsman respecting a complaint of Mr. N. dated August, 1984

After completing his investigation the Ombudsman recommended to the Board that the Appeal Board Panel in question revoke its decisions of September 22, 1981 and December 7, 1981, and grant the complainant entitlement to compensation benefits for his condition diagnosed as left cerebral hemisphere infarction.

The Committee, after considering this matter with the Ombudsman and representatives of the Workers' Compensation Board, deliberated in camera and decided to support the Ombudsman's recommendation. Subsequently, the Workers' Compensation Board advised the Committee and the Ombudsman that it accepted the Committee's decision and would implement the recommendation.

ACCORDINGLY, TO FULFILL THE COMMITTEE'S TERMS OF REFERENCE, IT RECOMMENDS THAT THE APPEAL BOARD PANEL OF THE WORKERS' COMPENSATION BOARD REVOKE ITS RELEVANT DECISIONS AND AWARD THE COMPLAINANT ENTITLEMENT TO COMPENSATION BENEFITS, INCLUDING TEMPORARY TOTAL DISABILITY AND PERMANENT DISABILITY, FOR HIS CONDITION DIAGNOSED AS LEFT CEREBRAL HEMISPHERE INFARCTION AND THE CONTINUING SYMPTOMS OCCASIONED THEREBY.⁹

General Comments

Many of the cases involving the Workers' Compensation Board described above involved a consideration by the Ombudsman during his investigation, of a great number of competing medical opinions dealing with the injuries suffered by complainants, and the causal relationships if any, which existed between the injuries suffered and the continuing symptoms. In at least four cases the Ombudsman based his recommendation on an acceptance of the prevailing medical opinions which supported the complainant's position and a rejection of the medical opinions which did not. In many of these cases the supporting medical opinions were given by doctors whom the complainant had seen or been treated by personally, whereas the contrary medical opinions were given by doctors who had been retained by the Workers' Compensation Board. In the latter respect many of those doctors gave their opinions without ever having personally examined or met with the complainant.

These cases are the most difficult the Committee had to deal with. On the one hand, it is urged by the Ombudsman to accept his recommendation (and implicitly the medical opinions he prefers). He reminds the Committee of certain statements it has made that, where his statutory requirements are complied with in a Section 22(3) Report, the Committee will *prima facie* support his recommendation in that Report. On the other hand, it is confronted with the position of the Workers' Compensation Board, who argues that the medical opinions of the doctors it employs or retains should be accepted. The Board reasons that its physicians are most qualified to assess matters of injury and compensation since they have, when compared to doctors in private practice, the more extensive experience.

In some of the cases described above the Committee supported the recommendation of the Ombudsman and thereby accepted the medical opinions upon which he relied. In other cases the Committee supported the position of the Workers' Compensation Board and implicitly the opinions upon which it relied.

The Committee has said previously that when considering whether to support a recommendation of the Ombudsman, it will not sit as a "Court of Appeal". That principle is most difficult to honour when the Committee deals with cases of this nature. It is frankly impossible not to assess the two sets of competing medical opinions and to decide which in its opinion is the more reasonable in the circumstances. If the Committee did not assess the existing medical opinions upon which the Ombudsman and the Board respectively rely, it is unable to ascertain how it could otherwise deal with these cases without becoming a mere "rubber stamp" for the Ombudsman or for the position offered by the Workers' Compensation Board. The Committee intends to continue a dialogue with the Ombudsman and the Workers' Compensation Board on this most difficult problem. In the meantime, until a better solution is identified, if one exists, it will continue to assess the relative merits of the medical opinions relied upon by the Ombudsman and the Board.

PART V **Amendments to the Ombudsman Act and Rules for the Guidance of the Ombudsman in the exercise of his functions under the Ombudsman Act**

Rules for the Guidance of the Ombudsman

It goes without saying that the amendments to the Ombudsman Act that were expected in the spring of 1984 did not appear. Dr. Hill reported on September 6, 1984 that meetings with the Ministry of the Attorney-General continue, that the Ombudsman's recommendations regarding amendments are close to finalization, and that the Ministry has assured him that the bill has a high priority. The Committee wishes to reiterate that it is still ready, as it was at the time of the writing of its Eleventh Report, to receive this bill for necessary and appropriate consideration after it has been tabled.

PART VI **Communications received from the Public**

The subcommittee dealing with communications from the public (and consisting of one Member from each of the three political parties) has met twice and has dealt with sixteen communications. None of these was determined to fit the Committee's policy regarding what should be brought to the attention of the full committee - namely, that the communication assists the Committee in fulfilling its terms of reference.

On September 25, 1984, the Committee formally adopted a statement setting out its principles and procedures for dealing with communications from the public. This statement is appended to this Report as Schedule 2. The Committee also adopted an abbreviated form of this statement, which will be enclosed with the Committee clerk's letter to the communicant indicating that his or her letter has been received by the Committee.

PART VII Estimates of the Ombudsman for the fiscal year 1985-1986

This occasion represents only the second time that the Select Committee has considered the estimates of the Ombudsman. Because Dr. Hill is new to his position, the Committee engaged in extensive discussions with him regarding the direction in which he wishes to take the Office. Next time, it will take a keen interest in reviewing the implementation of his plans.

In its Eleventh Report, the Committee discussed a recommendation from its Second Report - viz., that the Ombudsman be required to adopt the Ontario Manual of Administration as the manual of its office. It is pleased with Dr. Hill's assurances that the Manual has again been adopted and will be followed this time. It has yet to receive and consider the report of the Provincial Auditor recommended by the Public Accounts Committee in its December, 1983 Report.

The Committee was also pleased with Dr. Hill's emphasis on fiscal responsibility. He reported that overall savings of \$206,000 annually have been effected. At a saving of \$39,000 the so-called "private hearings" have been eliminated, less expensive office space for the Ottawa branch has already been rented, transportation costs will be down, and new offices created will be of the economical "storefront" type. When staff must be replaced, care will also be taken to assess that such a replacement is necessary. One large, upcoming expense may consist of the renting of data processing equipment allowing for storage of data on the Office's own premises. A feasibility study is about to be undertaken regarding the computer and data processing needs of the Office as compared with rising storage costs with the University of Toronto.

The Committee ordered that the Chairman report the estimates of the Office of the Ombudsman for the fiscal year ending March 31, 1985 to the House without amendment.

PART VIII Special Report of the Select Committee Re: Human Rights

In April, 1984 the Committee tabled its Special Report on human rights. This report was prepared by the Committee in response to the resolution of the Legislature dated the 29th day of May, 1980 made by the late Jim Renwick.

The Committee recommended in the report that:

"The Committee shall, when it considers it necessary, consider, review, report and recommend to the Legislature on ways in which the Assembly can act to oppose and condemn acts of political killings, imprisonment, terror and torture and any other acts which may be included in any covenant or document to which Canada is or may become a signatory; and, in particular, the Committee shall have the power to consult with, and if deemed appropriate, establish formal relationships with, and provide actual support to government and non-governmental organizations whose aims and objectives are dedicated to the elimination of the kinds of acts mentioned above.

The Committee shall further have the power to receive, consider and review specific examples of the kinds of actions herein mentioned and, if deemed advisable, to report thereon to the Legislature with any recommendations for actions which the Legislature might take; and pursuant to the above, the Committee shall have the power to sit concurrently with the House at such times as it considers necessary and appropriate."

Regrettably the Legislature has not debated the Report notwithstanding that it has been on the Order Paper for some time. The Committee is of the opinion that its Report should be debated and its recommendation adopted. The Legislature's implementation of this recommendation will serve as a worthy tribute to the memory of Jim Renwick.

PART IX Schedules to Report

- Schedule 1 - Summary of Recommendations
- Schedule 2 - Principles and Procedures for Dealing
with Communications with the Public

SCHEDULE 1

SUMMARY OF RECOMMENDATIONS

1. ACCORDINGLY, THE COMMITTEE RECOMMENDS THAT THE WORKER'S COMPENSATION BOARD REVERSE ITS DECISION OF SEPTEMBER 20TH, 1983 AND GRANT THE COMPLAINANT A TEMPORARY SUPPLEMENT TO HIS PERMANENT PARTIAL DISABILITY AWARD. IT IS UNDERSTOOD THAT THE BOARD RETAINS FULL DISCRETION IN ASSESSING AND QUANTIFYING THE AMOUNT OF SUCH SUPPLEMENT.₁
(Page 11)
2. ACCORDINGLY, THE COMMITTEE RECOMMENDS THAT:
 - (A) THE MINISTER OF THE ENVIRONMENT ACCEPT IN PRINCIPLE THAT THE CROWN MAY, IN THE APPROPRIATE CIRCUMSTANCES, PAY A CLAIMANT INTEREST DUE PURSUANT TO A TERM OF A CONTRACT WITH A CONTRACTOR; AND
 - (B) THE MINISTER OF THE ENVIRONMENT CONSIDER THE MERITS OF THE COMPLAINANTS CLAIM FOR INTEREST OWING ON THE PRINCIPAL AMOUNT IN QUESTION AND FORMULATE A DECISION WHETHER OR NOT TO PAY SUCH CLAIM.₂ (Page 26)
3. THEREFORE, FOR THE PURPOSE OF FULFILLING ITS MANDATE, THE COMMITTEE RECOMMENDS THAT THE WORKERS' COMPENSATION BOARD REVOKE ITS PREVIOUS DECISION AND GRANT THE COMPLAINANT ENTITLEMENT TO BENEFITS FOR DISABLEMENT ARISING OUT OF AND IN THE COURSE OF HER EMPLOYMENT.₃ (Page 26)

4. ACCORDINGLY, TO FULFILL ITS TERMS OF REFERENCE THE COMMITTEE RECOMMENDS THAT THE APPEAL BOARD PANEL OF THE WORKERS' COMPENSATION BOARD REVOKE ITS DECISION OF JANUARY 16, 1981 AND GRANT THE COMPLAINANT ENTITLEMENT TO COMPENSATION BENEFITS, BOTH TEMPORARY AND PERMANENT, FOR THE DISABILITY RESULTING FROM THE LOSS OF HIS LEG.⁴ (Page 27)
5. ACCORDINGLY, TO FULFILL THE COMMITTEE'S TERMS OF REFERENCE, IT RECOMMENDS THAT THE APPEAL BOARD PANEL OF THE WORKERS' COMPENSATION BOARD REVOKE ITS DECISION DATED SEPTEMBER 15, 1981 AND RESTORE TO THE COMPLAINANT ENTITLEMENT TO BENEFITS FOR THE BROKEN LEG HE SUFFERED ON DECEMBER 21, 1979.⁵ (Page 28)
6. ACCORDINGLY, THE COMMITTEE RECOMMENDS THAT THE APPEAL BOARD PANEL OF THE WORKERS' COMPENSATION BOARD REVOKE ITS PREVIOUS DECISIONS AND GRANT THE COMPLAINANT ENTITLEMENT TO COMPENSATION FOR SUCH SYMPTOMS AS A FURTHER REVIEW OF ALL MEDICAL EVIDENCE INDICATES IS APPROPRIATE.⁶ (Page 30)
7. ACCORDINGLY, THE COMMITTEE RECOMMENDS THAT THE APPEAL BOARD PANEL OF THE WORKERS' COMPENSATION BOARD REVOKE ITS DECISION DATED FEBRUARY 9, 1982, AND AWARD THE COMPLAINANT ENTITLEMENT FOR THE PERIOD OF RECUPERATION FOLLOWING THE SURGERY IN 1969.⁷ (Page 32)
8. THE COMMITTEE FURTHER RECOMMENDS THAT THE WORKERS' COMPENSATION BOARD ASSESS THE COMPLAINANT FOR ANY PERMANENT DISABILITY CAUSED BY THE CARPAL TUNNEL SYNDROME REQUIRING THE SURGERY IN 1969, AND COMPENSATE THE COMPLAINANT FOR ANY DISABILITY SO IDENTIFIED.⁸ (Page 32)

9. ACCORDINGLY, TO FULFILL THE COMMITTEE'S TERMS OF REFERENCE, IT RECOMMENDS THAT THE APPEAL BOARD PANEL OF THE WORKERS' COMPENSATION BOARD REVOKE ITS RELEVANT DECISIONS AND AWARD THE COMPLAINANT ENTITLEMENT TO COMPENSATION BENEFITS, INCLUDING TEMPORARY TOTAL DISABILITY AND PERMANENT DISABILITY, FOR HIS CONDITION DIAGNOSED AS LEFT CEREBRAL HEMISPHERE INFARCTION AND THE CONTINUING SYMPTOMS OCCASIONED THEREBY.⁹ (Page 34)

SCHEDULE 2

PRINCIPLES AND PROCEDURES FOR DEALING WITH COMMUNICATIONS WITH THE PUBLIC

Every year, the Select Committee on the Ombudsman receives a number of written and oral submissions from members of the public. Some simply wish to comment on decisions or procedures of the Ombudsman's office, but a good many request action on the Committee's part.

This memorandum sets out the general principles and the specific procedures which the Committee has evolved to deal with such communications.

Communications from the public may disagree with conclusions reached by the Ombudsman (or by the Ombudsman's exercise of his discretion not to investigate a complaint), question the methods or motives of the Ombudsman's staff or allege wrongdoing or dereliction of duty by the Ombudsman's staff. The Committee's practice has been to review all communications with a view to deciding whether to pursue the matter in some detail and/or to invite the communicant to appear before the Committee. In the vast majority of the cases which have come before it, the committee has declined to pursue the matters raised by the communicant, primarily because it does not believe that its function is to "second guess" the Ombudsman or to re-investigate cases in which complainants do not accept the Ombudsman's conclusions.

In a very few instances, however, the Committee has invited members of the public to appear before it or reviewed matters raised by them in some detail.

The following excerpts from the Committee's reports are germane:

In recent months the Committee has received a number of requests from members of the public for permission to appear before it in person. The reasons for the requests have been related to the operation of the Ombudsman's office in a

specific instance or respecting some suggested amendment to The Ombudsman Act.

The Committee has always received written communications from the public. It will continue to receive any written communication from the public that is made on the basis that the Committee will receive it without any restriction as to the Committee's ability to make the communication, if it so decides, part of its public proceedings.

The Committee has decided that it will in appropriate circumstances hear from members of the public in person when, in the Committee's opinion, it will assist it in the formulation of general rules for the guidance of the Ombudsman in the exercise of his functions under The Ombudsman Act, or which may otherwise, in the Committee's opinion, assist it in reporting to the Legislature in accordance with its terms of reference. (Fifth Report, 1978, p. 99-100)

As the Committee has stated in its previous reports, it will continue to receive and consider these communications. However, it will only invite comments in person if it considers that the subject matter raised in the communication is such that would assist the Committee in carrying out any part of its terms of reference.

The Committee notes that a number of the communications received from the public deal with comments and concerns expressed respecting the Ombudsman's investigative and related procedures concerning a particular complaint which, as of the date of the communication to the Committee, had not been finally investigated or resolved by the Ombudsman. Generally, the Committee considers these types of communications to be premature. As a matter of general policy the Committee will not consider a concern of a complainant before the Ombudsman has issued a report or taken other appropriate steps pursuant to The Ombudsman Act. Any comments or concerns at that stage should be addressed to the office of the Ombudsman for discussion and, if possible, resolution. (Ninth Report, 1981, p. 9-10).

The approach to communications from the public set out below is agreed by the Committee and the office of the Ombudsman to work well.

PRINCIPLES

1. At all times and in all circumstances, the committee sets its own procedures and determines how communications are to be handled, subject to the provisions of the Committee's order of reference and to the provisions of the Ombudsman Act.
2. The Committee has consistently declined to act as a "court of appeal" on decisions by the Ombudsman, or as an "Ombudsman on the Ombudsman".
3. Each case raised by a member of the public will be individually considered and decided by the Committee on its own merits.
4. No one has an automatic "right" to appear before the Committee. The Committee will review the documents in each instances before deciding whether to extend any invitations to appear before the Committee.
5. Except in very unusual circumstances, all information, correspondence and reports exchanged between the communicant and the Committee and between the Ombudsman and the communicant are shared between the Committee and the Ombudsman. Because of the confidentiality required by the Ombudsman by his Act, documents exchanged between Ombudsman and persons and organizations other than complainant are not released to the Committee, except as they may be quoted or cited in the Ombudsman's report to the complainant.
6. The Committee reviews the documents supplied to it and takes its decisions at an open, public meeting, but names of communicants are not used and the documents do not form part of the Committee's public record.
7. In dealing with persons who communicate with it, the Committee and its staff should be careful not to raise false hopes of possible favourable resolutions of complaints or problems.

8. The Committee will not consider any communication if it involves a complaint which the Ombudsman is still investigating or may still investigate.

PROCEDURES

**(Exceptions to these procedures will,
of course, occasionally be required.)**

1. Letter is received by Chairman or clerk directly from members of the public or by referral from the Speaker or other MPP. (If first communication is oral, clerk or Chairman should ask that, if at all possible, the matter be put in writing for the Committee's consideration.)
2. Clerk acknowledges receipt of letter on behalf of Chairman. Letter from clerk is non-committal, indicating that the Committee will review the letter and the issues raised in it before deciding either to pursue the matter in detail or to invite the communicant to appear before the Committee. The clerk should also make it clear that, due to the Committee's schedule, it may be some time before the Committee will consider the complaint. Letter includes statement authorized by Committee setting out its policy on communications from the public (see Appendix A). If not included with original communication, clerk solicits copy of Ombudsman's report to complainant and other relevant correspondence from Ombudsman to communicant (for example, Ombudsman's responses to previous letter of criticism from communicant).
3. Clerk forwards copy of letter and any documents to Ombudsman. (Ombudsman may obtain written authorization from complainant so that otherwise confidential documents exchanged between Ombudsman and communicant may be released to Committee via the clerk or the counsel.)
4. Clerk meets with the staff of the Ombudsman to discuss communication. Clerk selects for distribution to Committee such documents as seem relevant. At a minimum, all written submissions from communicant and the Ombudsman's report to complainant (or letter indicating that the Ombudsman will not be investigating) should be distributed to Committee. Normally, only pro forma acknowledgments, covering letters and obviously extraneous material should be excluded from material provided to Committee.

5. Clerk removes names and identifying references to communicant, Ombudsman staff and others from all copies of documents. In order to preserve comprehensibility, initials of surnames may be retained.
6. Clerk provides anonymized documents to Subcommittee on Communications from the Public (see Appendix B for terms of reference) with covering memo summarizing the case and highlighting principal issues to be decided by Subcommittee.
7. In a public meeting, Subcommittee reviews documents with clerk and with Ombudsman's representatives. Documents do not form part of Committee's or Subcommittee's public record.
8. In a public meeting, the Subcommittee decides what action to take:
 - none
 - further correspondence with communicant
 - refer specific case, or issue raised by case, to full committee
 - other
9. If Subcommittee decides to take no further action, Chairman writes polite, but firm letter indicating that Committee has declined to pursue the matters raised by the communicant. If appropriate, without discussing merits of the case, Chairman indicates Committee's principle of not "second guessing" the Ombudsman.
10. Once Committee has concluded its consideration of a specific case, clerk collects all documents provided to Subcommittee and destroys them. Clerk retains file copy, which is not public and is never transmitted to Archives.
11. If communicant is not satisfied with Subcommittee's decision, the Chairman informs him that Subcommittee will only reconsider matter if "new information" is available, and only then if the new information is first made available to the Ombudsman for possible reconsideration of his conclusions. Until the Ombudsman decides not to reopen a complaint or, having reopened the complaint, reaches a conclusion on it, the Subcommittee will not further consider the matter.

APPENDIX A

INFORMATION FOR PERSONS WHO CONTACT THE SELECT COMMITTEE ON THE OMBUDSMAN

Authorized by the Committee

People write or call the Select Committee on the Ombudsman for a number of reasons. For example, they request that the Committee reconsider or reinvestigate complaints which the Ombudsman has investigated; they request that the Committee overrule conclusions reached by the Ombudsman with which they disagree; they complain about the methods or the motives of the Ombudsman's staff; they offer suggestions for the improved operation of the Office of the Ombudsman or of the Ombudsman Act; and they request an opportunity to appear in person before the Committee for a wide variety of reasons.

The Committee has established a subcommittee to deal with all such communications received by the Committee. This Subcommittee is composed of MPPs of all three political parties represented in the Legislature and is chaired by a Member of the Opposition. Its decisions must be unanimous; if any Member of the Subcommittee disagrees with any proposed action, the matter is automatically referred to the full Committee for consideration.

The Subcommittee individually reviews each submission to it, primarily on the basis of documents supplied to it by the person who has contacted the Committee. Whether or not the person requests it, all documents are treated confidentially; that is, they are not made public. Moreover, the names and identifying references to all persons mentioned in the documents are removed by the Committee staff, so that the Members of the Subcommittee will not know the names of the persons involved. This is done to ensure complete impartiality in the subcommittee's review of the case.

All documents provided to the Committee are also supplied to the Ombudsman for his consideration and possible reply. Occasionally, the Ombudsman

will request the person who has contacted the Committee to sign a release form so that he may supply certain documents to the Subcommittee without contravening the confidentiality requirements of the Ombudsman Act.

Although the Subcommittee reviews each matter submitted to it, and decides each one on its individual merits, it is most unusual for the Subcommittee to recommend any action, or to grant a person's request to appear in person. This reflects the Committee's strongly held view that, except in the most unusual circumstances, the Committee should not even consider intervention in complaints investigated by the Ombudsman. The Committee has consistently refused to act as an appeal body for cases in which persons who have complained to the Ombudsman are not satisfied by, or disagree with, the conclusions reached by the Ombudsman. Otherwise, the Committee would simply be taking over the Ombudsman's job, and this is not what the Legislature intended when it created the Committee.

The Committee welcomes comments which may help to improve the service provided by the Office of the Ombudsman to the people of Ontario, but it will normally not become involved in individual cases.

Questions about any of the foregoing should be directed to the clerk of the Committee.

APPENDIX B

TERMS OF REFERENCE FOR
SUBCOMMITTEE ON COMMUNICATIONS WITH THE PUBLIC

Ordered, That a subcommittee be struck to consider on the Committee's behalf communications from the public; the subcommittee to be composed of the following Members: Van Horne (Chairman), Runciman and Philip with a quorum of 3; substitution shall be permitted on written notice. All communications from the public to the Committee shall be referred to the subcommittee, which shall review and respond to them, provided that all decisions by the subcommittee shall be unanimous; any matters which are not decided unanimously by the subcommittee shall be considered by the full Committee. The subcommittee shall report to the Committee, for consideration by it, any matters which in the subcommittee's opinion warrant the full committee's attention. The subcommittee shall, subject to direction by the Committee, determine its procedures.

(Committee Minutes, September 29, 1983)

APPENDIX C

SAMPLE LETTER

Dear Mr. :

The Select Committee on the Ombudsman has reviewed your letter to me of March 10, 1984, and the enclosed documentation.

The Committee reached the decision that it should not pursue this matter. In the Committee's opinion, it cannot and should not, except in the most extraordinary situation, consider cases in which complainants disagree with, or are not satisfied by, the Ombudsman's conclusions. Otherwise, we would simply be taking over the Ombudsman's job and this is not what the Legislature intended when it created the Committee.

I wish to emphasize that in deciding not to pursue this matter, the Committee is in no way agreeing or disagreeing either with the Ombudsman's conclusions or with your comments about the Office of the Ombudsman. To repeat, the Committee does not, as a general policy, believe it should act in matters of this nature.

Yours truly,

Ron Van Horne, MPP
Chairman
Subcommittee on
Communications from the Public

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Standing Committee on the Ombudsman

Thirteenth Report 1986

First Session, Thirty-Third Parliament
35 Elizabeth II





LEGISLATIVE ASSEMBLY
ASSEMBLÉE LEGISLATIVE

The Honourable Hugh Edighoffer, M.P.P.,
Speaker of the Legislative Assembly.

Sir,

Your Standing Committee on the Ombudsman has the honour to present its 13th
Report and commends it to the House.

Ronald K. McNeil

Ronald K. McNeil, M.P.P.
Chairman

Queen's Park
11 April 1986

**MEMBERSHIP OF THE STANDING COMMITTEE ON
THE OMBUDSMAN**

RONALD K. McNEIL
Chairman

HOWARD SHEPPARD
Vice-Chairman

REUBEN BAETZ
MAURICE BOSSY
PATRICK HAYES
D. JAMES HENDERSON
ALLAN McLEAN

GILLES MORIN
BERNARD NEWMAN
ED PHILIP
YURI SHYMKO

TODD J. DECKER
Clerk of the Committee

JOHN P. BELL
Counsel to the Committee

MERIKE MADISSO
Research Officer

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PART I

INTRODUCTION

On the 10th day of July, 1985 the Standing Committee on the Ombudsman (the "Committee") was created with the following terms of reference:

"to review and consider from time to time the Reports of the Ombudsman as they become available and as the Committee deems necessary, pursuant to Section 16(1) of the Ombudsman Act, to formulate from time to time general rules for the guidance of the Ombudsman Act; to report thereon to the Legislature and to make such recommendations as the Committee deems appropriate. Further, the Committee may, with the agreement of the Legislature, be permitted to sit concurrently with the Legislature from time to time. And that the Committee shall have authority to sit during adjournments and the interval between Sessions and have full power to employ such staff as it deems necessary and to hold meetings and hearings in such places as the Committee may deem advisable, subject to budget approval from the Board of Internal Economy."

The change of the Ombudsman Committee from a Select to a Standing Committee is indeed meaningful. It creates a greater degree of permanence and stability to the entire Ombudsman process. The Committee commends the Legislature for this action.

The Committee held a number of organizational meetings in July, 1985. It met in formal session during the weeks of September-2nd and 9th, 1985 to review and consider the Twelfth Report of the Ombudsman and other matters relevant to its terms of reference.

The Select Committee on the Ombudsman ("the Select Committee") during its nine year history, in various of the thirteen reports, confirmed its support for the persons who held the office of Ombudsman and for the concept of the office itself. The Committee wishes, at this time, to confirm its support in the same way.

The Committee's hearings in September, 1985 with the Ombudsman, his staff and members of various governmental organizations was conducted, in an atmosphere of co-operation and cordiality.

For example, in his Twelfth Report Dr. Hill referenced nineteen cases wherein the governmental organizations affected had refused to implement recommendations made by him in Reports issued pursuant to Section 22(3) of the Ombudsman Act. Between late June, when the Ombudsman's Report was tabled in the House, and the beginning of September, when the Committee hearings commenced, fifteen of those cases had been resolved to the satisfaction of the Ombudsman. In all of those fifteen cases the governmental organization had decided to act upon the Ombudsman's recommendations in such a way that was acceptable to him and his staff. The Committee commends the Ombudsman and representatives of the governmental organizations affected for their efforts in resolving those cases before the Committee was required to consider them in detail. Such actions demonstrate a growing respect for the concept of the Ombudsman and for the Committee's process. Because those fifteen cases were resolved without Committee involvement, there will be no further comment on them in this Report.

The style of Dr. Hill as Ombudsman is now clearly emerging. He has chosen mediation and conciliation as important weapons in his arsenal to obtain desired results for his complainants. The Committee commends Dr. Hill for the effective use of these tools. It accepts his assurance that he will not permit mediation or conciliation to sacrifice quality of the results which are required in the circumstances of any complaint.

The Committee also notes with approval that Dr. Hill has disclosed certain systemic problems which he believes exist between his office and certain governmental organizations which tend to impede the work of his office. The Committee has encouraged Dr. Hill to continue bringing systemic problems to its attention. Where the Committee is satisfied that these problems in fact exist, it will seek to have them corrected especially where it will serve to improve the effectiveness of the Ombudsman operation.

Dr. Hill continues to reorganize the structure of his staff to further improve its performance and productivity. The Committee has encouraged him in this respect and intends to review results with him in more detail in 1986. Both Dr. Hill and the Committee are mindful of the continuing need to improve the length of time to process complaints, particularly those which involve the entire Ombudsman process.

The Ombudsman and this Committee are still awaiting the tabling by the Attorney General of a bill amending the Ombudsman Act. This legislature was promised by the former Attorney General to be tabled in the spring of 1984. In Part V of this Report, the Committee has recommended that such legislation be tabled without further delay.

The Ombudsman, in his Twelfth Report raised the issue of expansion of his jurisdiction. He cited a number of circumstances and statistics occurring within the past ten years which he believes support the conclusion that his jurisdiction be expanded. He has not however, formally recommended that such a step be taken now. He wishes to have the question thoroughly studies and discussed. While the Committee in this Report has refrained from expressing its opinion on the question of expanded jurisdiction, it nevertheless agrees with the Ombudsman that it is timely to raise and consider the question in an appropriate way. Accordingly,, in Part III(d) of this Report the Committee has recommended how this question can be raised and effectively considered so that a meaningful report can be tabled in the Legislature later this year.

PART II

TWELFTH REPORT OF THE SELECT COMMITTEE ON THE OMBUDSMAN

(a) Debate by Legislature

This Report was tabled in the Legislature in December, 1984. Regrettably it has not yet been debated. Early Reports of the Select Committee were not debated or adopted by the House. This omission prompted some governmental organizations to challenge the authority of the Committee's recommendations. As the Select Committee has observed in a number of its Reports failure by the Legislature to debate and where appropriate, adopt such recommendations can only serve to undermine the effectiveness of the office of the Ombudsman. The work and effectiveness of the Ombudsman and the Committee, particularly with respect to recommendation denied cases, would be greatly diminished if governmental organizations knew or believed that Committee Reports would not be debated and/or adopted. ACCORDINGLY, THE COMMITTEE RECOMMENDS THAT THE TWELFTH REPORT OF THE SELECT COMMITTEE ON THE OMBUDSMAN AS WELL AS THE SPECIAL REPORT OF THE COMMITTEE TABLED JANUARY 30, 1986 BE DEBATED AND ADOPTED BY THE LEGISLATURE AT THE EARLIEST POSSIBLE DATE.¹

(b) Responses from Governmental Organizations to Recommendations contained in the Report

(1) Ministry of the Environment (Recommendation 1)

It its Twelfth Report, the Committee made two recommendations:

- (A) The Minister of the Environment accept in principle that, the Crown may, in the appropriate circumstances, pay a claimant interest due pursuant to a term of a contract with a contractor; and

- (B) The Minister of the Environment consider the merits of the complainant's claim for interest owing on the principal amount in question and formulate a decision whether or not to pay such claim.

The Ministry has accepted in principle that it is within the Minister's jurisdiction to pay interest in appropriate circumstances. However, having considered the matter on its merits, the Minister decided against paying interest. In response, the Ombudsman questions whether the ministry, given its entrenched position, could have decided the question with objectivity.

The Committee agrees that, in fairness to both the ministry and the complainant, the matter should be assessed by someone other than the ministry. It therefore recommends that an independent adjudicator be appointed to assess the matter of whether or not interest is owed to the complainant.²

(2) Ministry of Labour - Workers' Compensation Board

Recommendations 3, 4, 5, 6, 7, & 8, 9

The Select Committee made seven recommendations to the Workers' Compensation Board respecting six recommendation denied cases contained in the Ombudsman's Eleventh Report. All of those recommendations have been implemented by the Board to the satisfaction of the Ombudsman. The Committee commends the Board for its actions.

PART III

TWELFTH REPORT OF THE OMBUDSMAN, APRIL, 1984 TO MARCH 31, 1985

(a) Organization and Operation of the Ombudsman's Office

The Ombudsman believes that a two-fold approach - consisting of decentralization and public education - would serve to strengthen the presence of the office in Ontario. The Committee continues to be interested in any plans whereby the Office becomes better known and access to its services if made available to all Ontarians, regardless of their place of residence. Mindful that 10% of complaints come from the 8% of the population living in northern Ontario, the Committee is pleased with the initiatives undertaken by the Ombudsman vis-a-vis northern Ontario - such steps as the appointment of a native programs officer for outreach to native communities; the appointment of a district officer who speaks English and Oji-Cree and another who speaks French, Cree and English; meetings with aboriginal leaders and personal visits to remote reserves. Similarly, the Committee is of the opinion that a reconstituted communications and public education directorate will also serve to address the concern it has always had about the Ombudsman's visibility in northern Ontario.

In this vein, the Committee is intrigued by the idea of using northern and southwestern Ontario residents as part-time representatives of the Ombudsman's office, along the lines of "stringers" used by newspapers. They would take the place of a more expensive alternative - the creation of more regional offices. Such representatives would perform educational and referral functions rather than investigative ones, these latter remaining in the Toronto office. A division of labour (in the north) along these lines probably leads to reduced effectiveness; even given the importance of good investigatory work and the time needed to train competent investigators, the committee questions why such a separation of functions if considered practical and in the best interests of the northern committees.

The Committee intends to discuss with the Ombudsman the process of a regional plan, the implementation of which he has characterized as his "next major responsibility".

Finally, the Committee will be reviewing with the Ombudsman the effectiveness of his new organizational structure, with its five investigative areas, and its emphasis on the investigative function as the most important dimension of the office's work. In particular, the effect the new structure has on the speed with which casework is handled will make a significant comment on the new system. It is hoped that this change, along with other changes designed to better working conditions for staff (a grievance procedure, a salary classification system based on the Ontario civil services, etc.), will also have a positive impact upon the way the office functions.

(b) Statistical Analysis

The Committee notes with approval that the substantial majority of cases are completed within the shortest period of time, according to statistics compiled by the Ombudsman's office. Similarly, the average duration of cases has decreased from 264 days in 1983/84 to 229 days in 1984/85 in the case of jurisdictional complaints, and, in the case of non-jurisdictional, from 50 days to 42 days in the same years.

The problem of slow response from particular ministries remains, however; 42 complaints required more than 33 months to close. Because some ministries (the Workers' Compensation Board, for example) take longer to address cases than is necessary, the statistics on average duration of cases are substantially distorted. In other words, a case that takes 3 to 4 years to close because for a two-year period the Ombudsman's office must await a response from the Board significantly raises the average duration time. To deal with the problem, the Ombudsman is currently monitoring a sample of complaints to determine which delays are the result of internal procedures and which ones are the result of external factors - that is, factors beyond the control of the office.

When these determinations are made, the matter can be taken up with senior people at the ministries. It is also true, as Dr. Hill believes, that an improvement in relations with the ministries will have an impact on statistics. Nonetheless, the Committee is of the opinion that scrutiny by it of these longer-lasting cases may accelerate the rate at which they are brought to a conclusion. To this end, it suggests that the Ombudsman list with reasons in his next annual report, a category of current investigations that are being delayed by factors outside of his control. A thorough study will be necessary to prepare this part of his next report.

(c) Amendments to the Ombudsman Act

In the Twelfth Report of the Select Committee page 36 it reported as follows:

"It goes without saying that the amendments to the Ombudsman Act that were expected in the spring of 1984 did not appear. Dr. Hill reported on September 6, 1984 that meetings with the Ministry of the Attorney-General continue, that the Ombudsman's recommendations regarding amendments are close to finalization, and that the Ministry has assured him that the bill has a high priority. The Committee wishes to reiterate that it is still ready, as it was at the time of the writing of its Eleventh Report, to receive this bill for necessary and appropriate consideration after it has been tabled."

Regrettably, no bill has yet been tabled in the Legislature. The amendment process began in 1978 after discussions between the then Ombudsman, the late Arthur Maloney, Q.C., and the then Attorney General, R. Roy McMurtry, Q.C. The tabling of this bill is now long overdue and the Committee is not aware of any satisfactory explanation for the continuing delay.

ACCORDINGLY, THE COMMITTEE RECOMMENDS THAT THE ATTORNEY GENERAL TABLE IMMEDIATELY IN THE LEGISLATURE A BILL AMENDING THE OMBUDSMAN ACT.³

The Committee, like its predecessor, expects that the bill will be referred to it, rather than the Justice Committee, for a clause by clause review.

(d) Expansion of Ombudsman's Jurisdiction

In his Twelfth Report and when he appeared before this Committee, Dr. Hill raised the issue of the expansion of the jurisdiction of the office of the Ombudsman. Dr. Hill has not yet recommended that his jurisdiction be expanded to include other provincially constituted organizations. Rather, he believes it is timely for a full discussion of the issue.

The Committee concurs with Dr. Hill that it is timely that the issue again be raised. The last such discussion occurred in 1978 when the later Arthur Maloney, Q.C. actively sought expansion of his jurisdiction. The Committee in its Fourth Report after carefully considering the matter stated as follows at page 83:

"THE COMMITTEE HAS CONCLUDED THAT THE CONCEPT OF AN OMBUDSMAN IS APPLICABLE TO LOCAL GOVERNMENTS IN ONTARIO. THE COMMITTEE RECOMMENDS THAT THE FUNCTION OF OMBUDSMAN TO LOCAL GOVERNMENT SHOULD NOT BE PERFORMED BY AN OMBUDSMAN WHO HAS JURISDICTION OVER PROVINCIAL OR CENTRAL GOVERNMENT ORGANIZATIONS.1

What the form or structure of that office or offices of a local Ombudsman might be, whether it be one or more provincially appointed Ombudsman, or whether local municipalities or authorities be empowered to set up an Ombudsman as they saw fit, would in our opinion be a matter for further study by this Committee or other appropriate bodies. Input from those most directly affected is essential before that question can be resolved. To do otherwise would only serve to foster an immediate distrust and opposition by local governments in Ontario."

While this Committee has not yet decided whether the concept of Ombudsman is appropriate for local governments in Ontario, it does agree with the Select Committee on the Ombudsman that a further review of the issue with input from

appropriate persons affected, is essential. In the Committee's opinion there are three issues which need to be addressed:

- (a) Is there a need for expansion of the jurisdiction of Ombudsman in Ontario to include other provincially constituted organizations;
- (b) If there is such a need, what is its scope; and
- (c) Who should perform the function covered by the expanded jurisdiction?

This Committee is of course uniquely suited to undertake the responsibility for such a review. ACCORDINGLY, IT WILL UNDERTAKE A REVIEW AND CONSIDERATION OF THE QUESTION OF THE EXPANSION OF THE JURISDICTION OF THE OMBUDSMAN OR AN EXPANSION OF OMBUDSMAN FUNCTIONS IN ONTARIO. THE COMMITTEE INTENDS TO CONDUCT SUCH PUBLIC HEARINGS WHERE AND WHEN IT CONSIDERS APPROPRIATE.

(e) Systemic Problems

Dr. Hill raised three systemic problems which he believes have been the cause of certain recurring complaints to his office against the Workers' Compensation Board. These problems were:

1. The Board's reluctance to rely on or consider decisions of the Courts in assisting it in the interpretation of its statute;
2. The Board's tendency to accept the opinions of its staff physicians over those of the workers' treating physicians; and
3. The Board's interpretation of Section 43 of its Act by which it rates permanent disability awards.

The Committee has left the first two problems to be discussed by Dr. Hill and appropriate members of the new Board, including its Chairman, Dr. Elgie. The Committee will be hearing from Dr. Hill whether they have been solved and accordingly defers any further comment or action at this time.

The Ombudsman reminded the Committee that the Select Committee on the Ombudsman in its Ninth Report recommended that the Cabinet refer Section 43 of the Act to the Supreme Court of Ontario for consideration and interpretation under the Constitutional Questions Validity Act and that the Attorney General declined to accept the Committee's recommendation.

The Ombudsman advised the Committee that approximately one-quarter of all Workers' Compensation Board complaints made to his office involve permanent disability awards and in some degree the complaints emanate from the Board's interpretation of this section which he believes to be wrong and inappropriate. Dr. Hill urged the Committee to either recommend again to the Legislature and the Attorney General that the section be referred to the Supreme Court of Ontario under the Constitutional Questions Validity Act or to recommend that the Minister of Labour review the Weiler Report and the Report of the Standing Committee on Resource Development with a view to amending the legislation to provide for an equitable system of permanent disability ratings.

The Committee notes that the Ombudsman is of the opinion that the more equitable and flexible definition of this section which he urges would substantially reduce the number of appeals to the Board. While practical expediency should not of itself be a reason for this Committee to act, it can be considered along with the other factors which caused the Select Committee to make its recommendation in its Ninth Report. The Committee is confident that the Ministry of Labour will in any event review the Weiler Report and the Report of the Standing Committee on Resources Development with a view to amending legislation to provide for a more equitable system of permanent disability ratings. However, the Committee is convinced for the reasons set forth by the Select Committee on the Ombudsman in its Ninth Report and by the Ombudsman in his submissions, that the

question of the interpretation of Section 43 of the Workers' Compensation Board should be referred to the Supreme Court of Ontario for consideration under the Constitutional Questions Validity Act. ACCORDINGLY, THE COMMITTEE RECOMMENDS THAT THE LIEUTENANT GOVERNOR IN COUNCIL REFER TO A JUDGE OF THE SUPREME COURT OF ONTARIO FOR HEARING AND CONSIDERATION THE INTERPRETATION OF SECTION 42(1) OF THE WORKMEN'S COMPENSATION BOARD ACT (NOW SECTION 43(1)).⁵

- (f) **Recommendations in previous Ombudsman Reports where it is expected that some further action will be taken by the Governmental Organization Affected**

Ministry of Education

The Committee has been dealing with this matter since its Third Report in 1977. In 1984 in its Eleventh Report, the Committee recommended that "Recommendation No. 23 of its Third Report be implemented by the Ministry of Education by means of a policy of insurance on a province-wide basis before the end of 1984."

Nineteen eighty-four has come and gone with little progress having been made on this matter. The Committee therefore **recommends that:** the ministry prepare an insurance program related to the injuries sustained in sports and/or shop activities by students in elementary and secondary schools which result in loss of future earnings; and that the ministry report to the committee.⁶

Ministry of Health

The Ministry has assured the Committee that the interim arrangement accepted by the Committee pending amendment of The Nursing Homes Act continues to be followed by the Ministry and will be followed until the legislation is amended. These amendments will be brought forward this fall, it is hoped, although they may be delayed until the spring, and will substantially formalize the interim arrangement.

PART IV

RECOMMENDATIONS DENIED BY GOVERNMENTAL ORGANIZATIONS AS REPORTED IN THE TWELFTH REPORT OF THE OMBUDSMAN

(i) Ministry of Consumer and Commercial Relations

Detailed Summary No. 1

Due to the nature and extent of the facts of this case the Committee refers and relies upon the statement of facts agreed upon between the Ombudsman and the Ministry and filed with the Committee. This statement is attached to this Report as Schedule "A".

As a result of his investigation, the Ombudsman determined that the then Minister of Consumer and Commercial Relations, as a result of a discussion with HUDAC officials concerning the homeowners complaints made unequivocal promises of assistance to the homeowners. These promises were apparently without regard to the position of the builder. The Ombudsman further determined that Ministry representatives misunderstood the nature of HUDAC's commitment for assistance that HUDAC misunderstood the Ministry's expectations. Although there was an offer eventually made from the builder to rectify certain matters, the substance of that offer was not in the same wide sweeping terms as the Minister's unequivocal promise to the homeowners. In any event, it is further complicated by the fact that the Ministry never communicated the builder's offer to the homeowners before it was eventually withdrawn.

Although the facts and chronology of this case may seem relatively complex, in the Committee's opinion the fundamental issue is a simple one. The Minister as a result of a discussion with HUDAC concluded that with its assistance he and his Ministry could provide the type of relief to the homeowners they were seeking and publicly so stated on numerous occasions in categorical terms.

The Ombudsman concluded that the Ministry's handling of the matter was "unreasonable" and in particular: (1) the Ministry omitted to document its commitment from HUDAC and to confirm this commitment in writing with HUDAC; (2) the Ministry unreasonably omitted to provide HUDAC administrators with a statement of the Ministry's expectation and its knowledge of the history of the homeowners problems; and (3) the Ministry unreasonably omitted to notify the homeowners of the builder's offer to repair the homes; and (4) the Ministry unreasonably omitted to provide the homeowners with results of HUDAC's inspections as well as written notice of its final disposition of the matter.

As a result, the Ombudsman recommended in his report to the Ministry pursuant to Section 22(3) of the Ombudsman Act that:

1. (a) The Ministry reopen its file on the matter and take whatever steps are necessary to review the HUDAC and related inspection reports for those house which are owned by persons who originally filed a deficiency list and who are still interested in some form of assistance from the Ministry. (It shall be the Homeowners' Association's responsibility to advise the Ministry of the names of these persons.)
- (b) Following this review, it is the Ombudsman's recommendation that the Ministry, at no cost to the homeowners, repair those homes which had suffered damage as a result of a major structural defect relating to original construction as reflected in the HUDAC inspection reports.
- (c) If any of the above-noted homeowners have repaired damage caused by major structural defects relating to original construction, or any substantial defects relating to original construction, as reflected in the HUDAC reports, then these homeowners should be compensated for their repair costs upon proof of payment.

2. The Ministry should send report letters to those homeowners who are still interested (as indicated to the Ministry by the Homeowners' Association), and who originally filed deficiency lists. The letters should indicate the matters about which the homeowners complained as well as the corrective work intended.

The Ministry has refused to implement the Ombudsman's recommendations. In essence the Ministry's position is that it used its best efforts and expended a great deal of time to obtain a settlement in a situation in which it had no legislative or regulatory authority to do so. The fact that its efforts were ultimately unsuccessful does not result in entitlement from the public purse. There was no regulatory failure or inadvertent action by the Ministry. The Ministry is further of the view that it did ultimately cause the builder to make an offer to do certain remedial work but that certain actions of the homeowners in creating publicity as a pressure tactic, resulted in the withdrawal of the offer. In other words, the Ministry believes that it did negotiate a deal for the homeowners but that the homeowners by their own actions caused it to be repudiated.

The Committee, in principle, agrees with the conclusions and recommendations of the Ombudsman in this case. Regardless of the Ministry's position the simple fact remains that the Minister made public commitments to the homeowners that deficiencies would be repaired. For example, during his attendance before the Standing Committee on the Administration of Justice on October 10th and October 12th, 1979, the then Minister The Honourable Frank Drea stated respectively:

"I have worked out an arrangement whereby all those homes will be repaired...They will be brought up to standard...I would like to get those homes repaired by the end of the year if possible. But it will be done at no cost to the homeowner." "...the arrangement I have worked out is that the deficiencies will be remedied, whatever the deficiencies are...Somebody would be brought in at their convenience free of charge to them, the place would be rectified up to the present standard..."

You put it in place exactly as though it had been covered by the HUDAC home warranty program..."

The Minister obviously understood or was determined that he had authority to make such a commitment to the homeowners and accordingly the Committee agrees with the Ombudsman that they are entitled to some relief. The Committee did not hear any evidence that anyone, including HUDAC, contradicted the Minister or otherwise qualified the commitment he had made.

The Committee notes that there has been some difficulty in identifying who of the original homeowners are still eligible to have this remedial work done. To help clarify the matter the Committee intends that its recommendations following be limited to:

- (a) those who originally filed deficiency lists as requested by the Ministry and are still interested in obtaining some form of assistance;
- (b) those who have deficiencies identified from existing inspection reports to be either or both of: (i) major structural defects relating to the original construction; and (ii) substantial defects relating to the original construction. If the deficiencies have not already been identified for the persons in question, they should be done by Ministry representatives or designates.
- (c) those who have not previously recovered monies for the repair or rectification of either type of defect.

ACCORDINGLY, THE COMMITTEE RECOMMENDS THAT

1. (a) THE MINISTRY REOPEN ITS FILE ON THE MATTER AND TAKE WHATEVER STEPS ARE NECESSARY TO REVIEW THE HUDAC AND RELATED INSPECTION REPORTS FOR THOSE HOUSES WHICH ARE OWNED BY PERSONS WHO ORIGINALLY FILED A DEFICIENCY LIST AND WHO ARE STILL INTERESTED IN SOME FORM OF ASSISTANCE FROM THE MINISTRY. (IT SHALL

BE THE HOMEOWNERS' ASSOCIATION'S RESPONSIBILITY TO ADVISE THE MINISTRY OF THE NAMES OF THESE PERSONS.)

(b) FOLLOWING THIS REVIEW THE MINISTRY, AT NO COST TO THE HOMEOWNERS, PAY OR CAUSE PAYMENT TO BE MADE FOR THE REPAIR OF THOSE HOMES WHICH HAVE SUFFERED DAMAGE AS A RESULT OF A MAJOR STRUCTURAL DEFECT RELATING TO ORIGINAL CONSTRUCTION OR IN WHICH THERE EXIST SUBSTANTIAL DEFECTS RELATING TO ORIGINAL CONSTRUCTION AS REFLECTED IN THE HUDAC INSPECTION REPORTS.

(c) IF ANY OF THE ABOVE-NOTED HOMEOWNERS HAVE REPAIRED DAMAGE CAUSED BY MAJOR STRUCTURAL DEFECTS RELATING TO ORIGINAL CONSTRUCTION, OR ANY SUBSTANTIAL DEFECTS RELATING TO ORIGINAL CONSTRUCTION, AS REFLECTED IN THE HUDAC REPORTS, THEN THESE HOMEOWNERS SHOULD BE COMPENSATED FOR THEIR ACTUAL REPAIR COSTS.

IN THE COMMITTEE'S OPINION THE MINISTRY SHOULD SEEK CONTRIBUTION AND/OR INDEMNITY FROM HUDAC FOR THE COST OF THESE REPAIRS. THE COMMITTEE HAS CONCLUDED THAT HUDAC'S ACTIONS HAVE IN SOME MEASURE CAUSED OR CONTRIBUTED TO THE MINISTRY'S PREDICAMENT AND TO THE STATEMENTS MADE BY THE MINISTER WHEREIN HE MADE COMMITMENTS TO THE HOMEOWNERS.⁷

(i) Ministry of Consumer and Commercial Relations

Liquor Licence Board of Ontario - Detailed Summary No. 3

The complainant in this case was a former liquor licence inspector employed by the Liquor Licence Board of Ontario who resigned in July 1979 prior to the Board implementing a decision to dismiss him for conduct which the Board's disciplinary process identified as:

1. falsification of expense accounts;
2. excessive inspection of premises closest to his residence;
3. conducting spot inspections with another inspector without prior approval of the Board; and
4. accepting benefits from a licensee.

The complainant did not register his complaint with the Ombudsman until September 20, 1982, over three years from the date of his resignation. The Ombudsman as a result of his investigation concluded that:

1. the complainant was pressured into resigning by the Board and was effectively dismissed.
2. The Board's decision to dismiss the complainant was unreasonable as the allegations against him did not warrant such severe discipline under the circumstance; and
3. the Board failed to follow fair procedures in arriving at its decision to dismiss the complainant and further, that the Board did not properly follow its own policies with respect to disciplinary procedures.

The Committee notes that the Ombudsman's Report did not refute the Board's position that the complainant had in fact committed the acts in question.

Accordingly, the Ombudsman recommended that:

1. That the Liquor Licence Board of Ontario compensate that complainant by an amount equal to one full year's salary from which shall be subtracted the two months' salary already received as severance, the value realized by him when he purchased the Board's vehicle at wholesale

cost, and an amount equal to 90 days salary in view of the remaining allegations against him concerning expenses and the manner in which he carried out his duties. In calculating the amount owing, the complainant's pension income should also be taken into consideration.

An approximate calculation of the amount owing according to this formula, including payment of interest pursuant to the Judicature Act, section 535, is \$15,236.66.

The Committee notes that of the \$15,236.66 recommended by the Ombudsman for payment, \$6,558.66 is interest calculated in the manner set forth in the Courts of Justice Act and relevant to actions in the Supreme and District Courts of Ontario.

The Board refused to implement the Ombudsman's recommendation citing among other things the failure of the complainant to complain as to any lack of procedural fairness on its part during the material times, the timing of his complaint to the Ombudsman relative to his resignation, the failure of the complainant to avail himself of the grievance procedures provided under the relevant collective bargaining agreement and that he had in fact resigned.

In the Committee's opinion, the complainant was in fact dismissed from his position by the Board. His decision to resign was made with knowledge of the Board's decision to fire him in any event and with some belief that if he did not resign the matter might be referred to the legal authorities for investigation. However, the Committee believes that the Board's decision to fire him was not unreasonable in the circumstances since grounds for dismissal did in fact exist.

However, the Committee agrees with the Ombudsman that the Board in reaching its decision to terminate the complainant's employment and in implementing its disciplinary process, did not treat him fairly. Specifically, he was refused an adjournment of the discipline hearing at the request of his legal counsel and he was further refused an opportunity of appearing in person before the Board

itself with his counsel, to answer the allegations which had been made against him and which had been determined by the investigative hearing.

The Committee notes that the Ombudsman has not, by his recommendation, sought to have the complainant reinstated in his position. Dr. Hill believes compensation to the complainant is sufficient relief. The Committee agrees with this conclusion. However, it is of the opinion that the complainant has already, in the circumstances, received appropriate compensation. In addition to the money and benefits already received, the complainant was permitted to have his resignation stand as the official record of his departure from the Board. When compared to the actual reasons for his departure, a record of resignation is far superior.

(iii) Ministry of Labour - Workers' Compensation Board

Detailed Summary No. 9

The complainant in this case, now deceased, worked for a number of years in a tool and die factory where he was exposed to a number of chemicals. Specifically, he was exposed regularly to kerosene, industrial alcohol, Lawson's Spray White E, a cleaner solvent and blue dye.

After about 7 years of work the complainant suffered from nose bleeds, nausea and fatigue. He was medically diagnosed as suffering from chronic hepatitis. In 1979 he was forced to retire from work due to his illness whereupon he submitted a claim to the Board. His claim was ultimately denied on the grounds that no causal relationship had been established between his work and the disease.

The Committee immediately after hearing from the Ombudsman and representatives of the Workers' Compensation Board deliberated in camera and decided to support the recommendation of the Ombudsman in this case. Thereupon the Committee immediately announced its decision to the Ombudsman and the Board stating that it would be making a formal recommendation in its next report.

Accordingly, the Committee does not intent to review the details of this case further.

To fulfil its terms of reference the Committee concurs in the opinion of the Ombudsman that pursuant to Section 11(1)(b) of the Ombudsman Act the Appeal Board in this case unreasonably concluded that the complainant's liver disease was not causally related to his employment with the accident employer. ACCORDINGLY, THE COMMITTEE RECOMMENDS THAT THE APPEAL BOARD REVOKE ITS DECISION DATED DECEMBER 10, 1982 AND GRANT THE COMPLAINANT ENTITLEMENT FOR HIS LIVER DISEASE AS BEING CAUSALLY RELATED TO HIS EMPLOYER WITH THE ACCIDENT EMPLOYER.⁷

Detailed Summary No. 14

This complaint concerns an Appeal Board decision of the Workers' Compensation Board dated December 17, 1982 wherein the complainant was denied his appeal for benefits as the Board found no accident was described as occurring on the date in question nor had it been established that any disability displayed by the complainant arose out of or in the course of his employment.

During his investigation the Ombudsman determined that in January 1981 the complainant experienced a sudden onset of low back pain while performing his regular duties as a crane operator. Previously, in the summer of 1980 he experienced back pain while gardening at his home. The complainant had been a crane operator for approximately 14 years during which time he worked substantially on a type of crane which subjected him to a great deal of jarring and bumping. As well, the crane had a brake pedal which was extremely stiff and difficult to operate.

The Ombudsman included that the circumstances of the complainant's job, particularly the repetitive, jarring and strenuous movement required in the operation of the crane in question, together with the timing of the onset of the symptoms in January 1981, came within the definition of accident set forth in the

Workers' Compensation Act. The Ombudsman noted that Directive 2 of the Workers' Compensation Board Policies and Administrative Directives requires that the disablement must have some causal relationship with the work being performed. That is that there must be "something about the work which can be considered to have caused the disablement such as strenuous work, awkward position, unaccustomed strain or a movement arising out of work".

The "something about the work" which caused the disablement in the Ombudsman's opinion was the jarring and bumping of the crane and the movements required and experienced in its operation. The Ombudsman noted that prior to January 1981 the complainant had not lost time from work nor did he receive any medical attention for any back problems. The Ombudsman further noted the opinions of two medical practitioners which supported a casual relationship between the work performed and the complainant's back disability. Fundamental to the Ombudsman's position is that the complainant's disability is not attributed to one specific action but to the work in general which involved awkward positions and constant use of jarring equipment.

Accordingly, after concluding that the Appeal Board decision that the complainant's disablement did not arise out of or in the course of employment was unreasonable, the Ombudsman recommended that the decision of the Appeal Board which found that the complainant did not suffer disablement arising out of and in the course of employment, be revoked and the Board grant the complainant entitlement to the compensation benefits on the basis of an aggravation of a pre-existing degenerative disc disease, arising out of and in the course of his employment.

The Board refused to implement the recommendation on the grounds that it was unable to identify any "something" about the work to cause the disablement to come on. The Board further discounted the opinions of the doctors whose opinions supported a causal relationship between the work and the onset of the symptoms. In other words, unless the Board is able to identify a specific incident at work which immediately precedes the complaint of symptoms or injury by the

complainant, it will not recognize that an "accident" had occurred arising out of or in the course of employment. In other words, the Board does not recognize that a series of repeated events which culminate in physical harm to a worker can come within the definition of accident for the purposes of entitlement under the legislation. The Committee supports the recommendation of the Ombudsman in this case. From the evidence presented to the Committee and particularly the medical opinions, there can be little doubt that the operation of the crane over the years in question and in the circumstances presented at least aggravated and contributed to the complainant's back disability. The Workers' Compensation Board has placed an overly technical interpretation of the definition of accident under the Act. The question of entitlement to compensation in circumstances such as presented in this case should not be determined by whether or not a worker had the "good fortune" to experience symptoms of pain while actually on the job.

ACCORDINGLY, THE COMMITTEE RECOMMENDS THAT THE APPEAL BOARD REVOKE ITS DECISION DATED DECEMBER 17, 1982 AND GRANT THE COMPLAINANT ENTITLEMENT TO COMPENSATION BENEFITS ON THE BASIS OF AN AGGRAVATION OF PRE-EXISTING DEGENERATIVE DISC DISEASE, ARISING OUT OF AND IN THE COURSE OF HIS EMPLOYMENT.⁸

By this recommendation the Committee intends that, at least, the complainant receive benefits for the nine month period that he was unable to work. The Committee has not made any findings respecting the issue of future entitlement to benefits. That is for the Board to assess if it becomes necessary so to do.

PART V

RULES FOR THE GUIDANCE OF THE OMBUDSMAN IN THE
EXERCISE OF HIS FUNCTIONS UNDER THE OMBUDSMAN ACT

The Committee concurs with the views expressed by the Select Committee on the Ombudsman that because of the pending legislation amending the Ombudsman Act, it is premature to consider whether any additional rules are appropriate for the guidance of the Ombudsman in the exercise of his functions. When the Committee comes to consider the amending legislation it will address the question of rules at that time.

PART VI

FREEDOM OF INFORMATION ACT (BILL 34)

The following is the report of the Committee's subcommittee on Bill 34 which has been received and approved. The Committee will be making submissions to the Standing Committee on Procedural Affairs in May on the matters set forth in this Part.

The Committee is of the opinion that it, rather than the Standing Committee on Procedural Affairs, should perform the functions that are set out in s. 60 and 61 of Bill 34. The Committee holds this opinion because the duties of the Freedom of Information and Privacy Commissioner are similar to the duties of the Ombudsman and because it is the Standing Committee on the Ombudsman, of all parliamentary committees, which has had experience in the review of such duties.

There are a substantial number of similarities between the two offices. The office of the Commissioner is set up in a manner similar to the Ombudsman's office. Both are appointed by the Legislature and are officers of the Legislature. Both offices respond to the grievance of a citizen and in so doing protect that citizen's civil liberties. The Ombudsman concept as a watchdog or protector for the ordinary person is internationally recognized; it has been described by Dr. Bernard Frank, the former Chairman of the International Bar Association's Ombudsman Committee as follows: "It is the basic purpose of the Ombudsman to protect the human rights of the citizen with respect to complainants against Government." Arthur Maloney, the province's first Ombudsman, has stated that "The Ombudsman is the functionary to whom the citizen turns when he feels he has been unfairly dealt with by an appointed official of the bureaucracy." From these descriptions of the Ombudsman function, it seems clear that the Commissioner of Information and Privacy also seeks to protect the human rights of the citizen vis-a-vis the government in the form of an official of the bureaucracy.

Both offices are also required, by their respective acts, to conduct independent investigations; the Ombudsman and his staff have extensive experience in this area. Both also attempt to mediate the conflict between the citizen and the bureaucracy - Dr. Hill informally and the Commissioner because he is required to do so by his act.

And both are reviewed by a Committee of the House. What is now the Standing Committee on the Ombudsman was originally constituted as a select committee to oversee the functioning of the province's first Ombudsman. The Committee has a history of conducting these reviews in a non-partisan way; freedom of information and protection of individual privacy are also matters which should be reviewed in this way. Moreover, since it is the case that Bill 34 does not provide for an appeal to the courts from a decision of the Commissioner, review by an experienced Committee of the Legislature is essential. Similarly, because Bill 34 establishes, under ss. 12 to 22, broad exemptions to the right of access, review by an experienced parliamentary committee is all the more important.

Finally, if the Committee's interpretation of s. 46(1) and (4) of the bill is correct, the Committee will, in fact, be dealing with one important aspect of the freedom of information legislation and should, therefore, deal with it totally.

The subsections read as follows:

(1). . .

the exercise of the discretion of a head to disclose or refuse to disclose a record which is found to be included under an exemption in sections 13, 14, 15, 16, 17, 18, 19, 20 or 22 is not appealable.

(4) The Ombudsman Act does not apply in respect of a complaint for which an appeal is provided under this Act.

Therefore, refusals to disclose under the exemption sections are properly within the Ombudsman's jurisdiction. Complaints which cannot be resolved by the Ombudsman

and governmental organization in question may be referred to the Standing Committee on the Ombudsman. One parliamentary committee - the Standing Committee on the Ombudsman - therefore already has a review function in relation to the Act. There does not seem to be a need to introduce review by a second committee.

PART VII

COMMUNICATIONS RECEIVED FROM THE PUBLIC

Since the committee's last report, the subcommittee dealing with communications from the public met once to deal with one communication and to adopt principles and procedures for its conduct.

On September 11, 1985 the chairman of the subcommittee reported on its activities to the full committee. Mr. Philip reported that the subcommittee had considered the request by a member of the public that it re-hear a matter which had been considered by the committee in December of last year. The subcommittee affirmed the principle that, although it was true that a new committee was in place, decisions of the previous committee would stand.

At the same time, the full committee took as adopted the principles and procedures for dealing with communications from the public (see Schedule "B").

PART VIII

SPECIAL REPORT ON THE WAYS IN WHICH THE ASSEMBLY
MAY ACT TO MAKE ITS VOICE HEARD AGAINST POLITICAL
KILLINGS, IMPRISONMENT, TERROR AND TORTURE.

The Committee wishes to emphasize the importance it places on the matters discussed in its Special Report on the ways in which the Assembly may act to make its voice heard against political killings, imprisonment, terror and torture, and reprints its Special Report in this, its 13th Report.



Standing Committee on the Ombudsman

Special Report

On the ways in which
The Assembly may act to
make its voice heard against
political killings, imprisonment,
terror and torture.

First Session, Thirty-Third Parliament
34 Elizabeth II



**STANDING COMMITTEE ON
THE OMBUDSMAN**

**Report on the ways in which
the Assembly may act to
make its voice heard against
political killings, imprisonment,
terror and torture**



LEGISLATIVE ASSEMBLY
ASSEMBLÉE LÉGISLATIVE

The Honourable Hugh Edghoffer, M.P.P.,
Speaker of the Legislative Assembly.

Sir,

Your Standing Committee on the Ombudsman has the honour to present its
Report and commends it to the House.

Ronald K. McNeil

Ronald K. McNeil, M.P.P.
Chairman

Queen's Park
30 January 1986

**MEMBERSHIP OF THE STANDING COMMITTEE ON
THE OMBUDSMAN**

RONALD K. McNEIL
Chairman

HOWARD SHEPPARD
Vice-Chairman

REUBEN BAETZ
MAURICE BOSSY
PATRICK HAYES
D. JAMES HENDERSON
GILLES MORIN

BERNARD NEWMAN
ED PHILIP
F. JACK PIERCE
YURI SHYMKO

TODD J. DECKER
Clerk of the Committee

JOHN P. BELL
Counsel to the Committee

MERIKE MADISSO
Research Officer

In April, 1983 the Select Committee on the Ombudsman ("Select Cominittee") tabled its Special Report on Human Rights. This Report was prepared by the Select Committee in response to the Resolution of the Legislature dated May 29th, 1980 and made by the late James Renwick, M.P.P. The Select Committee recommended in the Report that its order of reference be expanded as follows:

THE COMMITTEE SHALL, WHEN IT CONSIDERS IT NECESSARY, CONSIDER, REVIEW, REPORT AND RECOMMEND TO THE LEGISLATURE ON WAYS IN WHICH THE ASSEMBLY CAN ACT TO OPPOSE AND CONDEMN ACTS OF POLITICAL KILLINGS, IMPRISONMENT, TERROR AND TORTURE AND ANY OTHER ACTS WHICH MAY BE INCLUDED IN ANY CONVENANT OR DOCUMENT TO WHICH CANADA IS OR MAY BECOME A SIGNATORY; AND, IN PARTICULAR, THE COMMITTEE SHALL HAVE THE POWER TO CONSULT WITH, AND IF DEEMED APPROPRIATE, ESTABLISH FORMAL RELATIONSHIPS WITH, AND PROVIDE ACTUAL SUPPORT TO GOVERNMENT AND NON-GOVERNMENTAL ORGANIZATIONS WHOSE AIMS AND OBJECTIVES ARE DEDICATED TO THE ELIMINATION OF THE KINDS OF ACTS MENTIONED ABOVE.

THE COMMITTEE SHALL FURTHER HAVE THE POWER TO RECEIVE, CONSIDER AND REVIEW SPECIFIC EXAMPLES OF THE KINDS OF ACTIONS HEREIN MENTIONED AND, IF DEEMED ADVISABLE, TO REPORT THEREON TO THE LEGISLATURE WITH ANY RECOMMENDATIONS FOR ACTIONS WHICH THE LEGISLATURE MIGHT TAKE; AND PURSUANT TO THE ABOVE, THE COMMITTEE SHALL HAVE THE POWER TO SIT CONCURRENTLY WITH THE HOUSE AT SUCH TIMES AS IT CONSIDERS NECESSARY AND APPROPRIATE.

Notwithstanding that the Report had been on the Order Paper in the 32nd Parliament, it was never debated. This Committee is committed to the implementation of the substance of the recommendation contained in the Report. The need today to assist the Legislature in making its voice heard on the matter of international human rights still exists. Accordingly, the Committee adopts as its own Report the Select Committee's Report. For the assistance of Members of the House the Report is annexed hereto as Appendix "A".

To accommodate this Committee's different status, relative to the Select Committee, it amends the recommendation set forth on the Report to read as follows:

The Standing Committee recommends that its order of reference be expanded as follows:

The Standing Committee shall, when it considers it necessary, consider, review, report and recommend to the Legislature on ways in which the Assembly can act to oppose and condemn acts of political killings, imprisonment, terror and torture and any other acts which may be included in any covenant or document to which Canada is or may become a signatory; and, in particular, the Standing Committee shall have the power to consult with, and if deemed appropriate, establish formal relationships with, and provide actual support to government and non-governmental organizations whose aims and objectives are dedicated to the elimination of the kinds of acts mentioned above.

The Standing Committee shall further have the power to receive, consider and review specific examples of the kinds of actions herein mentioned and, if deemed advisable, to report thereon to the Legislature with any recommendations for actions which the Legislature might take; and pursuant to the above, the Standing Committee shall have the power to sit concurrently with the House at such times as it considers necessary and appropriate.

The Committee further recommends that this Report be placed on the Order Paper for early debate.



Ontario

LEGISLATIVE ASSEMBLY
ASSEMBLÉE LÉGISLATIVE

The Honourable John M. Turner
Speaker of the Legislative Assembly

April 1, 1983.

Sir,

We, the undersigned Members of the Select Committee on the Ombudsman have the honour to submit the attached report on ways in which the Assembly may act to make its voice heard against political killings, imprisonment, terror and torture, in accordance with the Order of the House, October 13, 1981.

ROBERT W. RUNCIMAN, M.P.P.
Chairman

ROBERT MACQUARRIE, Q.C., M.P.P.

ROBERT MITCHELL, M.P.P.

RENE PICHE, M.P.P.

YURI SHYMKO, M.P.P.

DON BOUDRIA, M.P.P.

RON VAN HORNE, M.P.P.

TONY LUPUSELLA, M.P.P.

MICKEY HENNESSY, M.P.P.

DAVID COOKE, M.P.P.

WILLIAM HODGSON, M.P.P.

JOHN EAKINS, M.P.P.

MEMBERS OF THE SELECT COMMITTEE
ON THE
OMBUDSMAN

| | |
|--------------------------------------|---------------------|
| ROBERT W. RUNCIMAN, M.P.P., Chairman | Leeds |
| YURI SHYMKO, M.P.P. | High Park-Swansea |
| JOHN EAKINS, M.P.P. | Victoria-Haliburton |
| DON BOUDRIA, M.P.P. | Prescott-Russell |
| RONALD G. VAN HORNE, M.P.P. | London North |
| DAVID COOKE, M.P.P. | Windsor-Riverside |
| RENE PICHE, M.P.P. | Cochrane North |
| WILLIAM HODGSON, M.P.P. | York North |
| ROBERT C. MITCHELL, M.P.P. | Carleton |
| ROBERT MACQUARRIE, Q.C., M.P.P. | Carleton East |
| MICKEY HENNESSY, M.P.P. | Fort William |
| TONY LUPUSELLA, M.P.P. | Dovercourt |

| | |
|--------------|--------------------------|
| JOHN P. BELL | Counsel to the Committee |
| GRAHAM WHITE | Clerk of the Committee |

The Committee wishes to acknowledge the contribution of the following current and former Members of the Legislature who served on the Committee during its consideration of political and human rights:

| | |
|-------------------|--------------------|
| Margaret Campbell | Robert Eaton |
| Jim Gordon | Ed Havrot |
| Colin Isaacs | George Kerr |
| John Lane | Patrick Lawlor |
| Ross McClellan | Gordon Miller |
| Ed Philip | Margaret Scrivener |
| James Taylor | Richard Treleaven |
| Osie Villeneuve | |

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INTRODUCTION

In its Ninth Report, the Committee commented upon its work respecting the Resolution of the House as follows:

"A. Resolution of the Legislative Assembly dated May 29th, 1980

On the 29th of May, 1980, the Legislative Assembly passed a resolution put forward by Mr. James Renwick, Q.C., M.P.P.:

"That this Assembly request the Select Committee on the Ombudsman to consult with the United Nations Commission on Human Rights, Amnesty International and the International Commission of Jurists and others, if advisable, with a view to reporting to this Assembly on ways in which this Assembly may act to make its voice heard against political killings, imprisonment, terror and torture."

The Committee in its eighth report advised the Assembly that it intended to meet with a number of other groups and individuals beyond the three mentioned in the resolution. However, the Committee's work in this regard was not complete when the Legislature was dissolved.

The Committee is of the opinion that the work started by its predecessor committee should and must be completed to give full effect to the unanimous resolution passed by the House in May of 1980. The Committee concurs whole-heartedly with the resolution and with the work which the Committee had completed up to dissolution.

Strictly speaking, the completion of the task outlined in this resolution is beyond the Committee's original terms of reference. For this reason it obtained approval of the Legislature on October 13, 1981 to complete the work of its predecessor committee."

The Committee reviewed the evidence presented to its predecessor and held further meetings in February, 1982. This report is based on all opinions, advice and documentation presented to the Committee since 1980.

From the outset, the Committee's approach to its work has reflected the themes running through the House Debate of May, 1980: a recognition that the evils of political killing, torture and imprisonment pervade the world; a strong sense that all persons fortunate enough to enjoy the benefits of a free, democratic society have an obligation to speak out and to exert their influence against such evils; uncertainty as to how the Legislative Assembly of Ontario could act only to "make its voice heard", but also to take effective action to set right these manifest wrongs; and concern as to the extent to which the Ontario Legislature can act on matters which occur in other countries.

These themes led the Committee to canvass a broad spectrum of opinion from those Canadian organizations and individuals knowledgeable and experienced in matters of international, human and political rights. They further prompted the Chairman of the Committee to write the Secretary of State for External Affairs seeking his guidance and support. Appendix "A" to this Report is the exchange of correspondence between the Chairman and the Secretary of State for External Affairs.

In addition to offering his written support the Federal Minister sent as his representative to the Committee a senior diplomat with extensive experience in human rights matters who strongly encouraged the Committee that its work was not only entirely proper, but extremely important and beneficial within the overall context of the Canadian federalism.

The following groups and individuals appeared before the Committee. The Committee wishes to acknowledge their assistance and to commend their dedication to the ideal of international political rights.

Amnesty International

Canadian Parliamentary Helsinki Group

Government of Canada, Department of External Affairs
- Ambassador Yvon Beaulne, Canadian Ambassador to
the Holy See and Canadian Representative on the
United Nations Human Rights Commission

International Commission of Jurists (Canadian Section)

Interparliamentary Union

Inter-church Committee on Human Rights in Latin
America

Patrick D. Lawlor, Q.C.

Cannon Borden Purcell, Chairman, Ontario Human
Rights Commission

James A. Renwick, Q.C., M.P.P.

Professor Walter Tarnopolsky, Member, Canadian
Human Rights Commission; Canadian Delegate to the
United Nations Committee on Human Rights

Task Force on Churches and Corporate Responsibility

Early in its deliberations, the Committee conferred with the Ombudsman, who whole-heartedly supported the intent of the Resolution, but expressed the opinion that, owing to the limitations of his jurisdiction, he could not be of assistance to the Committee in this respect.

FINDINGS

No submission was put to the Committee more strongly, and more consistently than the position that the Legislature does have the right to take steps to make its voice heard on the matters contained in the Résolution. Some even went so far as to urge the Committee to conclude that the Legislature has a duty to act, particularly in view of Ontario's role in the ratification of the International Covenant on Civil and Political Rights.

The Committee has concluded that the Legislative Assembly does have authority in law to "act to make its voice heard against political killings, imprisonment, terror and torture.". It may in fact have a legal duty in so far as Ontario's participation in the ratification of United Nations covenants imposes obligations on it in the international field.

In the Committee's opinion the critical question is not whether the Legislative Assembly has the legal authority to act in this way. The critical question is now: what is the extent to which the Legislative Assembly can act. Put more directly, to what extent can the Legislative Assembly take any action intended to influence actions in a foreign jurisdiction which result in political killings, imprisonment, terror or torture.

In 1983, a year after the proclamation of Canada's new Constitution, the answer to this question is far from clear. On the one hand, there are those, relying

upon the "Labour Conventions" case (A.G. Canada vs A.G. Ontario (1937) A.C. 326), who maintain that the provinces have, through the vehicle of treaty making, some authority to become directly involved in the field of international affairs.

On the other hand is the apparent prevailing view, which certainly is held by the Federal Government, that the provinces cannot act directly and independently of the Government of Canada in this area. Historically, the provinces have conducted themselves substantially in accordance with this point of view.

A comparative analysis of these two positions will not lead to a resolution of the critical question. In the Committee's opinion, the resolution is found in a statement of the Premier in the Legislature on June 10, 1982. Although the context of his remarks is "Nuclear Disarmament" the principle enumerated is equally applicable to the issues raised by the Resolution.

"Matters of foreign policy and matters of defence policy obviously do not fall within the constitutional responsibilities of the government of our province. Therefore, we have been, in the past, genuinely reticent to express explicit points of view in areas of international negotiations or foreign policy. Such matters are justifiably the responsibility of the government and Parliament of our nation.

Nevertheless, there are certain issues that are so wide-reaching, and of such global significance, to each and every one of us, as human beings and as citizens of the world, that we have a responsibility to search our conscience and share with ourselves the things we care about the most."

This matter was also eloquently addressed by The Honourable R. Roy McMurtry at the Second Annual Anatoli Scharansky Lecture in Toronto, (June 6, 1982) when he re-affirmed the Government of Ontario's commitment that "we will

continue to promote international human rights and at every opportunity we will reaffirm our commitment to individual justice and the rule of law".

Certainly, the commitment of the Legislative Assembly of the Province of Ontario can be no less than the commitment of the Government of Ontario as articulated by the Premier and the Attorney General.

The remarks of the Premier and the Attorney General clearly support the point of view repeatedly expressed to the Committee by the witnesses who appeared before it: the Province of Ontario, provided it operates within the "proper channels", that is, through the Government of Canada, has a clear and necessary role to play in dealing with matters such as political killings, imprisonment, terror or torture.

It may come as a surprise to some Members that senior representatives of Canada in the field of foreign affairs have not only acknowledged such a role for Ontario but have encouraged such involvement without further delay.

THE NEED FOR A PERMANENT MECHANISM

The Committee has concluded that, in order for the Legislature to ensure that its commitment to the spirit of the Resolution be fulfilled, there must exist a vehicle, capable of acting quickly, which could bring appropriate matters to the Legislature's attention on a continuing basis, and which could offer advice and recommendations on appropriate courses of action. Thus, the question of the extent to which the Legislature can act will be continuously reviewed.

The suggestion most frequently made to this Committee on how this goal might be achieved, was that a permanent committee of the Legislature be charged with overseeing human and political rights, with particular emphasis on political torture, imprisonment and killing. Proposals as to the precise nature and structure of this committee varied: some suggested that the Select Committee on the Ombudsman should assume these responsibilities; others were in favour of creating a new Standing Committee, and one proposal was for a special Speaker's committee with unique mandate and powers. Agreement was general, however, that the Assembly required some mechanism for maintaining a watching brief on international human and political rights, and for advising the Assembly on specific action it might take.

The Committee has concluded that, while the creation of a new permanent committee of the Legislature is the desirable vehicle, it is, at least for the present, not practical so to do.

The best alternative in the circumstances is that this Committee's order of reference be expanded to permit it to serve the Legislature as the "permanent vehicle". Of all existing Committees it is most suitable in that:

- (a) this Committee already has the relevant background and experience as a result of its work leading to this report;
- (b) the general subject matter has parallels to the concept of the Ombudsman;
- (c) this Committee has in place staff qualified to undertake the ongoing work necessary to fulfil the expanded terms of reference;
- (d) generally this Committee has functioned on a non-partisan basis, an approach which must prevail with any Committee charged with these responsibilities.

HOW THE LEGISLATURE CAN ACT

At this stage, it is impossible to delineate with any certainty all of the ways which the Legislative Assembly can act to "make its voice heard". In the final analysis those ways can only really be developed after the Legislature and the Committee has had actual involvement in specific cases.

In any event, however, to ensure that the Legislative Assembly is able to effectively act in this area it will be necessary for the Committee to develop resources and a pool of expertise upon which the Legislature can draw in evaluating the most appropriate course of action in any given case.

To fulfil this requirement, the Committee intends to establish formal relationships with knowledgeable persons in the Department of External Affairs, the Ministry of Inter-Governmental Affairs and the relevant Committees of the Parliament of Canada and the United Nations. Formal relationships will also be established with certain appropriate non-governmental organizations which actively work to promote human and political rights in the world such as Amnesty International, International Commission of Jurists, and the Interparliamentary Union.

These formal relationships will serve to establish a "presence" of the Legislative Assembly in the area of world human rights. It will also ensure that the Committee is kept continuously informed of significant, specific crises as well as longer term developments in this field.

It is, of course, the Committee's intention that these relationships will be established in the name of the Legislative Assembly of the Province of Ontario as one of the ways in which the Assembly can "make its voice heard". The Legislative Assembly will be thereby continuously involved in world human rights.

The Committee foresees its role on behalf of the Assembly to consist of the following:

- (a) notification from any source, including a member of the Legislative Assembly, of circumstances in the world where it is alleged human or political rights are violated;
- (b) consideration of the circumstances surrounding the alleged violation;
- (c) deliberation upon an appropriate course of action to be adopted by the Legislative Assembly;
- (d) report to the Assembly with recommendations.

The Committee also intends to monitor responses to actions taken by the Legislature and in turn report regularly thereon together with any recommendations for further action by the Legislature.

Without in any way restricting the generality of the types of actions which the Legislative Assembly might take upon a recommendation from the Committee, or on its own, the following is a partial list of proposals for action by the Assembly which has been put to the Committee by those who have appeared before it:

- (a) the passage of formal resolutions by the Assembly expressing general support for human and political rights and condemning particular cases of repression and political violence;

- (b) with respect to individual cases, the passage of resolutions specifically deploring the suppression of the human and political rights of parliamentaries throughout the world and relatives of Ontario residents;
- (c) reviewing and improving conditions for persons who have come to Canada as political refugees;
- (d) promoting of ratification by Ontario of the United Nations draft code of conduct for law enforcement officials;
- (e) assisting non-governmental organizations financially or through the secondment of legislative staff;
- (f) promoting the review and strengthening of Canadian legislation on political terrorism;
- (g) organizing and participating in conferences of Canadian legislators on the subject of world human rights;
- (h) participating, as part of Canadian delegations, in international meetings on human rights;
- (i) promoting sanctions against jurisdictions which engage in political torture, imprisonment and killing;
- (j) reviewing educational policies and practices in Ontario designed to foster an understanding and appreciations of fundamental human and political rights.

The Committee has not yet decided whether any or all of these possible courses of action are appropriate. Those decisions can only be taken after the Committee has gained further insight and experience and has studied the appropriateness of each course of action in the context of specific human rights violations.

The Committee wishes to assure the Members of the Legislature that, except for establishing relationships with governmental and non-governmental agencies as discussed above, it will not on any matter of world human rights act on its own accord. Its function is purely that of agent of the Legislature.

The Committee also wishes to assure the Legislative Assembly that it does not propose that to include within its mandate issues of "domestic" human rights, for example, alleged violations of the Ontario Human Rights Code. There are already in place in Ontario the mechanisms to deal with those issues.

Finally, the Committee wishes to emphasize that it is mindful of its limitations. The Committee does not expect to be meeting weekly on human rights matters, but rather to meet from time to time to review general matters related to its mandate and to be ready to deal quickly with specific allegations of violations of human rights elsewhere in the world. Certainly the Committee will not let its concerns with international political rights interfere with its responsibility of reviewing the reports of the Ombudsman and of reporting to the Assembly on these reports and related matters.

RECOMMENDATION

The Committee recommends that ITS ORDER OF REFERENCE BE EXPANDED AS FOLLOWS:

"THE COMMITTEE SHALL, WHEN IT CONSIDERS IT NECESSARY, CONSIDER, REVIEW, REPORT AND RECOMMEND TO THE LEGISLATURE ON WAYS IN WHICH THE ASSEMBLY CAN ACT TO OPPOSE AND CONDEMN ACTS OF POLITICAL KILLINGS, IMPRISONMENT, TERROR AND TORTURE AND ANY OTHER ACTS WHICH MAY BE INCLUDED IN ANY COVENANT OR DOCUMENT TO WHICH CANADA IS OR MAY BECOME A SIGNATORY; AND, IN PARTICULAR, THE COMMITTEE SHALL HAVE THE POWER TO CONSULT WITH, AND IF DEEMED APPROPRIATE, ESTABLISH FORMAL RELATIONSHIPS WITH, AND PROVIDE ACTUAL SUPPORT TO GOVERNMENT AND NON-GOVERNMENTAL ORGANIZATIONS WHOSE AIMS AND OBJECTIVES ARE DEDICATED TO THE ELIMINATION OF THE KINDS OF ACTS MENTIONED ABOVE.

THE COMMITTEE SHALL FURTHER HAVE THE POWER TO RECEIVE, CONSIDER AND REVIEW SPECIFIC EXAMPLES OF THE KINDS OF ACTIONS HEREIN MENTIONED AND, IF DEEMED ADVISABLE, TO REPORT THEREON TO THE LEGISLATURE WITH ANY RECOMMENDATIONS FOR ACTIONS WHICH THE LEGISLATURE MIGHT TAKE; AND PURSUANT TO THE ABOVE, THE COMMITTEE SHALL HAVE THE POWER TO SIT CONCURRENTLY WITH THE HOUSE AT SUCH TIMES AS IT CONSIDERS NECESSARY AND APPROPRIATE."

The Committee was concerned that the recommendations it proposed to the Assembly be more than hollow posturing and pious but ineffective words. For if the resolution of the Assembly specifically enjoined the Committee to advise it on ways "to make its voice heard", the implication was clear that the ultimate objective was not merely the expression of the Legislature's opinion but tangible improvement in the lot of persons whose human and political rights are being involved. In short, the Committee seeks results not gestures.

After reviewing the evidence presented by individuals and groups with a great deal of experience in cases of political imprisonment, torture and killing, the Committee has concluded that the Legislative Assembly of Ontario can indeed be an effective force against these evils. The Committee is under no illusions that the overall results will not be slight and the process slow, difficult and frustrating. Yet time and again the Committee was shown that publicity, political pressure, even personal appeals have achieved surprisingly positive results. To be sure, certain repressive regimes are entirely impervious to any sort of publicity or pressure; yet many others have demonstrated that they are sensitive to world public opinion and adverse publicity. Moreover, such countries may take the absence of criticism of their violation of human and political rights as tacit approval of their practices. Finally, as the Committee was told by a former victim who had been released from custody because of the intervention of concerned individuals throughout the world, the support and concern of complete strangers can be a powerful psychological boost for the victims of political torture and imprisonment.

Clearly, the passage of a resolution in the Ontario Legislature condemning human rights violations in certain countries will not magically result in the cessation of torture and the release of political prisoners. The evidence is clear, however, that such action is an important element in eventually improving general conditions or righting individual wrongs. Formal steps by the Assembly in these matters are particularly significant; the expression of opinion by freely-elected and democratically responsive members of the Legislative Assembly is an especially clear and powerful signal of popular concern over human rights violations.

The Assembly cannot turn its back on the limited yet very real potential to help those suffering from political torture and imprisonment. Truly, in the words of Edmund Burke,

"the only way evil will ever dominate is if good men do nothing."

July 3, 1980

The Honourable Mr. Mark MacGuigan
Minister
External Affairs Department
Lester B. Pearson Building
125 Sussex Drive
OTTAWA, Ontario K1A 0G2

Dear Mr. Minister:

Re: Universal Political Rights

On the 29th of May, 1980, the Legislature concurred in a Resolution moved by Mr. Renwick:

"That this assembly request the select committee on the Ombudsman to consult with the United Nations Commission on Human Rights, Amnesty International and the International Commission of Jurists and others, if advisable, with a view to reporting to this assembly on ways in which this assembly may act to make its voice heard against political killings, imprisonment, terror and torture".

I enclose a copy of the Hansard Debates of that motion as well as a copy of the deliberations of the Select Committee on the Ombudsman on July 2nd, 1980 wherein preliminary discussions respecting the resolution took place..

My purpose in writing to you is two-fold. First, to inform you of this step taken by the Legislature of the Province of Ontario in the area of Human Rights. Secondly, to invite any comments which you and your Ministry feel are appropriate and which may assist the Committee in its deliberations.

I noted with interest the debate on the motion, including your own comments. You will be interested to know that Canada plays a significant role in the protection and promotion of international human rights, both in international fora and in our bilateral relations with other countries. Canada is represented on all the major international human rights bodies including of course, the U.N. Commission on Human Rights, and indeed Mr. Beaulne was chairman of the annual Commission meeting in 1979. We have sponsored and actively supported resolutions in the United Nations and elsewhere to develop effective international mechanisms to deal with human rights situations and to encourage universal adherence and closer compliance with them. Mr. Beaulne is eminently qualified to brief the Select Committee on Canada's activities in this field.

Yours sincerely,

A handwritten signature in dark ink, appearing to read 'MacGuigan', with a stylized, cursive-like flow.

Mark MacGuigan



The Secretary of State for External Affairs

Secrétaire d'Etat aux Affaires extérieures

Canada

OTTAWA, K1A 0G2

July 22, 1980

Pat
Dear Mr. Lawlor,

Thank you for writing on July 3 to inform me of the Legislature's Resolution of May 29 concerning the means available for indicating support for major human rights bodies such as the United Nations Commission on Human Rights, Amnesty International and the International Commission of Jurists. In this regard I welcome the proposal to invite Canada's representative to the United Nations Commission on Human Rights, Mr. Yvon Beaulne to meet with the Select Committee on the Ombudsman. He has, of course, heavy responsibilities both as Ambassador to the Vatican and as representative of Canada on the U.N. Commission. However, there is a good possibility that Mr. Beaulne will be in Canada for a brief period during the fall and may be able to meet with you. I have asked my office to be in touch with you closer to the time about this. If by chance the Committee's schedule and that of Ambassador Beaulne cannot be reconciled, I would be pleased to ask one of my officials directly concerned with human rights questions to meet with you.

With regards to Amnesty International and the International Commission of Jurists, I have encouraged closer contacts with those organizations by my Department and I appreciate why the Legislature would want to indicate to them its support for the important work they do in the human rights field. I am sure that the Select Committee will be developing such contacts.

.../2

Mr. Patrick D. Lawlor, Q.C., M.P.P.
Chairman
Select Committee on the Ombudsman
Room 110
Main Parliament Building
Queen's Park
Toronto, Ontario
M7A 1A2

The Committee has decided to invite the Canadian Representative on the United Nations Commission on Human Rights, Mr. Yvon Beaulne, to appear before it sometime this fall. It is intended that Mr. Beaulne, who is an official of your Ministry, may offer some suggestions, in his capacity as representative on that Commission, as to how the Legislative Assembly of the Province of Ontario may act to "make its voice heard".

Since Mr. Beaulne is an official of your Ministry, the Committee wished to advise you in advance of its intention and to seek any comments or suggestions you may have in that regard.

Yours very truly,

PDL/jb
Encls.

PATRICK D. LAWLOR, Q.C., M.P.P.
Chairman
Select Committee on the
Ombudsman

SCHEDULE "A"

Facts

1. The complainant is the president of a Homeowner's Association, the members of which purchased homes in a subdivision, between 1971 and 1973.
2. The builder refused to respond to complaints from the homeowners about deficiencies in the homes, some serious. No recourse was available under the Ontario New Home Warranties Plan Act as this was not then in force. The federal and municipal governments could not assist and recourse to the courts was generally not worthwhile.
3. When the Act later came in force the homeowners objected to the Ministry and to HUDAC, about the builder being registered as the problems with their homes had not been resolved. HUDAC made the decision to register the builder.
4. In 1978 a petition from 365 homeowners was presented to the Ontario Legislature. Following this Mr. Frank Drea, the then Minister advised that he had reached an agreement with HUDAC "where these homes will be brought up to standard just as though they were covered by the Warranty Program, which came into being after they were built". Mr. Drea subsequently made unequivocal promises that the homes would be rectified to the present HUDAC standards at no expense to the homeowners and that both original and resale buyers would be eligible. All homeowners filing deficiency lists with HUDAC were promised a report of the inspections of their homes.
5. 144 homeowners filed deficiency lists and inspections commenced. The homeowners who had filed lists in January and February of 1980 were advised by the Ministry that they would be told by May 15, 1980 of those repairs that would be effected and that the repair program would begin on June 1, 1980. The homeowners were also under the impression that they would have some input into HUDAC's determination as to what repairs were covered by the HUDAC standards.

6. As the inspection process was continuing it became apparent to the homeowners that they were not allowed any input into the inspection process. The deadline for the commencement of the repair program passed. The homeowners began contacting the Ministry frequently for information and demand more input into the inspection process. The Ministry maintains it kept up sufficient communication with the homeowners.
7. The homeowners became alarmed when a Ministry official spoke of the "negotiations with the builder" as their understanding was that this was not a negotiated process. They were also upset when the Ministry officials and the HUDAC officials referred to the repair of only substantial defects as opposed to "all deficiencies" as promised by Mr. Drea.
8. The homeowners contacted MPP's and the press with their concerns about the Ministry's handling of the matter and three local newspaper articles appeared as well as a broadcast interview. The focus of the publicity was on the Ministry's involvement as opposed to the conduct of the builder. The homeowners that they would be "taking a calculated risk" by generating publicity.
9. At the time that Mr. Drea made his promises to the homeowners, the builder of the homes had not been contacted and Mr. Drea later stated that if the builder would not cooperate in effecting repairs, then HUDAC and/or the building industry would step in and see that the homes were repaired. This however was not HUDAC's understanding of its "commitment". HUDAC officials maintain that they only stated that they would be pleased to look into the matter for the Ministry and do what they could to assist. There was no written communication between HUDAC and the Ministry indicating the nature of HUDAC's commitment nor the Ministry's expectations and knowledge of the complaints.
10. When the builder was contacted by HUDAC it appeared to be cooperative although it understood at the outset that there was no legal obligation for it to assist nor was the extent of the repairs known. The inspection reports were sent to the builder and through its lawyers an offer to pay 80% of the cost of repairs to those homes experiencing problems with their roofs or foundations

was received in September 1980. This assistance would only be offered to original homeowners as opposed to the resale buyers.

11. The Ministry viewed this offer as a shortfall in coverage from what was "understood" between HUDAC and the Ministry. The shortfall related to the owner cost sharing and the limitation to first time owners. HUDAC felt that the offer was fair and reasonable.
12. The homeowners were never informed of the builder's offer as the Ministry did not feel that the homeowners would accept the offer, as it was less than the Ministry had promised would be done. A representative of the homeowners has since confirmed that the offer would probably not have been acceptable to the homeowners in light of the Ministry's original promises.
13. Mr. Drea promised that before the dissolution of the Legislature on December 12, 1980 there would be a "full game plan" as to the program of repairs. No such game plan was revealed.
14. The Ministry had requested HUDAC to attempt to have the builder improve its offer despite HUDAC's belief that the offer was reasonable. The builder however put a deadline of March 25, 1981 for the acceptance of its offer and this deadline was allowed to expire without the homeowners being informed of its existence.
15. No repairs have been effected and the homeowners have not been formally advised of the Ministry's final disposition of the matter nor have they received a report on the results of the inspections of their houses.
16. In March of 1981 the complainant complained to the Ombudsman.
17. The Ombudsman issued a report in August of 1984 supporting this complaint.

SCHEDULE "B"

PRINCIPLES AND PROCEDURES FOR DEALING WITH COMMUNICATIONS FROM THE PUBLIC

Every year, the Standing (formerly Select) Committee on the Ombudsman receives a number of written and oral submissions from members of the public. Some simply wish to comment on decisions or procedures of the Ombudsman's office, but a good many request action on the Committee's part.

This memorandum sets out the general principles and the specific procedures which the Committee has evolved to deal with such communications.

Communications from the public may disagree with conclusions reached by the Ombudsman (or by the Ombudsman's exercise of his discretion not to investigate a complaint), question the methods or motives of the Ombudsman's staff or allege wrongdoing or dereliction of duty by the Ombudsman's staff. The Committee's practice has been to review all communications with a view to deciding whether to pursue the matter in some detail and/or to invite the communicant to appear before the Committee. In the vast majority of the cases which have come before it, the Committee has declined to pursue the matters raised by the communicant, primarily because it does not believe that its function is to "second guess" the Ombudsman or to re-investigate cases in which complainants do not accept the Ombudsman's conclusions.

In a very few instances, however, the Committee has invited members of the public to appear before it or reviewed matters raised by them in some detail.

The following excerpts from the Committee's reports are germane:

In recent months the Committee has received a number of requests from members of the public for permission to appear before it in person. The reasons for the requests have been related to the operation of the Ombudsman's office in a specific instance or respecting some suggested amendment to The Ombudsman Act.

The Committee has always received written communications from the public. It will continue to receive any written communication from the public that is made on the basis that the Committee will receive it without any restriction as to the Committee's ability to make the communication, if it so decides, part of its public proceedings.

The Committee has decided that it will in appropriate circumstances hear from members of the public in person when, in the Committee's opinion, it will assist it in the formulation of general rules for the guidance of the Ombudsman in the exercise of his functions under The Ombudsman Act, or which may otherwise, in the Committee's opinion, assist it in reporting to the Legislature in accordance with its terms of reference. (Fifth Report, 1978, p. 99-100)

The Committee continues to receive and consider communications from members of the public. Many of these communications include comments respecting the organization and operation of the Ombudsman's office and requests for opportunities to appear before the Committee to elaborate on those comments.

As the Committee has stated in its previous reports, it will continue to receive and consider these communications. However, it will only invite comments in person if it considers that the subject matter raised in the communication is such that would assist the Committee in carrying out any part of its terms of reference.

The Committee notes that a number of the communications received from the public deal with comments and concerns expressed respecting the Ombudsman's investigative and related procedures concerning a particular complaint which, as of the date of the communication to the Committee, had not been finally investigated or resolved by the Ombudsman. Generally, the Committee considers these types of communications to be premature. As a matter of general policy the Committee will not consider a concern of a complainant before the Ombudsman has issued a report or taken other appropriate steps pursuant to The Ombudsman Act. Any comments or concerns at that stage should be addressed to the office of the Ombudsman for discussion and, if possible, resolution. (Ninth Report, 1981, p. 9-10).

The approach to communications from the public set out below is agreed by the Committee and the office of the Ombudsman to work well.

PRINCIPLES

1. At all times and in all circumstances, the Committee sets its own procedures and determines how communications are to be handled, subject to the provisions of the Committee's order of reference and to the provisions of the Ombudsman Act.
2. The Committee has consistently declined to act as a "court of appeal" on decisions by the Ombudsman, or as an "Ombudsman on the Ombudsman".
3. Each case raised by a member of the public will be individually considered and decided by the Committee on its own merits.
4. No one has an automatic "right" to appear before the Committee. The Committee will review the documents in each instance before deciding whether to extend an invitation to appear before the Committee.
5. Except in very unusual circumstances, all information, correspondence and reports exchanged between the communicant and the Committee and between the Ombudsman and the communicant are shared between the Committee and the Ombudsman. Because of the confidentiality required of the Ombudsman by his Act, documents exchanged between the Ombudsman and persons and organizations other than the complainant are not released to the Committee, except as they may be quoted or cited in the Ombudsman's report to the complainant.
6. The Committee reviews the documents supplied to it and takes its decisions at an open, public meeting, but names of communicants are not used and the documents do not form part of the Committee's public record.
7. In dealing with persons who communicate with it, the Committee and its staff should be careful not to raise false hopes of possible favourable resolutions of complaints or problems.
8. The Committee will not consider any communication if it involves a complaint which the Ombudsman is still investigating or may still investigate.

PROCEDURES

(Exceptions to these procedures will, of course, occasionally be required.)

1. Letter is received by Chairman or clerk directly from members of the public or by referral from the Speaker or other MPP. (If first communication is oral, clerk or Chairman should ask that, if at all possible, the matter be put in writing for the Committee's consideration.)
2. Clerk acknowledges receipt of letter on behalf of Chairman. Letter from clerk is non-committal, indicating that the Committee will review the letter and the issues raised in it before deciding either to pursue the matter in detail or to invite the communicant to appear before the Committee. The clerk should also make it clear that, due to the Committee's schedule, it may be some time before the Committee will consider the complaint. Letter includes statement authorized by Committee setting out its policy on communications from the public (see Appendix A). If not included with original communication, clerk solicits copy of Ombudsman's report to complainant and other relevant correspondence from Ombudsman to communicant (for example, Ombudsman's responses to previous letter of criticism from communicant).
3. Clerk forwards copy of letter and any documents to Ombudsman. (Ombudsman may obtain written authorization from complainant so that otherwise confidential documents exchanged between Ombudsman and communicant may be released to Committee via the clerk or the counsel.)
4. Clerk meets with the staff of the Ombudsman to discuss communication. Clerk selects for distribution to Committee such documents as seem relevant. At a minimum, all written submissions from communicant and the Ombudsman's report to complainant (or letter indicating that the Ombudsman will not be investigating) should be distributed to Committee. Normally, only pro forma acknowledgments, covering letters and obviously extraneous material should be excluded from material provided to Committee.

5. Clerk removes names and identifying references to communicant, Ombudsman staff and others from all copies of documents. In order to preserve comprehensibility, initials of surnames may be retained.
6. Clerk provides anonymized documents to Subcommittee on Communications from the Public (see Appendix B for terms of reference) with covering memo summarizing the case and highlighting principal issues to be decided by Subcommittee.
7. In a public meeting, Subcommittee reviews documents with clerk and with Ombudsman's representatives. Documents do not form part of Committee's or Subcommittee's public record.
8. In a public meeting, the Subcommittee decides what action to take:
 - none
 - further correspondence with communicant
 - refer specific case, or issue raised by case, to full committee
 - other
9. If Subcommittee decides to take no further action, Chairman writes polite letter indicating that Committee has declined to pursue the matters raised by the communicant. If appropriate, without discussing merits of the case, Chairman indicates Committee's principle of not "second guessing" the Ombudsman.
10. Once Committee has concluded its consideration of a specific case, clerk collects all documents provided to Subcommittee and destroys them. Clerk retains file copy, which is not public and is never transmitted to Archives.
11. If communicant is not satisfied with Subcommittee's decision, the Chairman informs him that Subcommittee will only reconsider matter if "new information" is available, and only then if the new information is first made available to the Ombudsman for possible reconsideration of his conclusions. Until the Ombudsman decides not to reopen a complaint or, having reopened the complaint, reaches a conclusion on it, the Subcommittee will not further consider the matter.

All documents provided to the Committee are also supplied to the Ombudsman for his consideration and possible reply. Occasionally, the Ombudsman will request the person who has contacted the Committee to sign a release form so that he may supply certain documents to the Subcommittee without contravening the confidentiality requirements of the Ombudsman Act.

Although the Subcommittee reviews each matter submitted to it, and decides each one on its individual merits, it is most unusual for the Subcommittee to recommend any action, or to grant a person's request to appear in person. This reflects the Committee's strongly held view that, except in the most unusual circumstances, the Committee should not even consider intervention in complaints investigated by the Ombudsman. The Committee has consistently refused to act as an appeal body for cases in which persons who have complained to the Ombudsman are not satisfied by, or disagree with, the conclusions reached by the Ombudsman. Otherwise, the Committee would simply be taking over the Ombudsman's job, and this is not what the Legislature intended when it created the Committee.

The Committee welcomes comments which may help to improve the service provided by the Office of the Ombudsman to the people of Ontario, but it will normally not become involved in individual cases.

Questions about any of the foregoing should be directed to the clerk of the Committee.

INFORMATION FOR PERSONS WHO CONTACT THE STANDING COMMITTEE ON THE OMBUDSMAN

Authorized by the Committee

People write or call the Standing Committee on the Ombudsman for a number of reasons. For example, they request that the Committee reconsider or reinvestigate complaints which the Ombudsman has investigated; they request that the Committee overrule conclusions reached by the Ombudsman with which they disagree; they complain about the methods or the motives of the Ombudsman's staff; they offer suggestions for the improved operation of the Office of the Ombudsman or of the Ombudsman Act; and they request an opportunity to appear in person before the Committee for a wide variety of reasons.

The Committee has established a subcommittee to deal with all such communications received by the Committee. This Subcommittee is composed of MPPs of all three political parties represented in the Legislature and is chaired by a Member of the Opposition. Its decisions must be unanimous; if any Member of the Subcommittee disagrees with any proposed action, the matter is automatically referred to the full Committee for consideration.

The Subcommittee individually reviews each submission to it, primarily on the basis of documents supplied to it by the person who has contacted the Committee. Whether or not the person requests it, all documents are treated confidentially; that is, they are not made public. Moreover, the names and identifying references to all persons mentioned in the documents are removed by the Committee staff, so that the Members of the Subcommittee will not know the names of the persons involved. This is done to ensure complete impartiality in the subcommittee's review of the case.

**TERMS OF REFERENCE FOR
SUBCOMMITTEE ON COMMUNICATIONS WITH THE PUBLIC**

Ordered, That a subcommittee be struck to consider on the Committee's behalf communications from the public; the subcommittee to be composed of the following Members: Philip (Chairman), McNeil and Morin with a quorum of 3; substitution shall be permitted on written notice. All communications from the public to the Committee shall be referred to the subcommittee, which shall review and respond to them, provided that all decisions by the subcommittee shall be unanimous; any matters which are not decided unanimously by the subcommittee shall be considered by the full Committee. The subcommittee shall report to the Committee, for consideration by it, any matters which in the subcommittee's opinion warrant the full committee's attention. The subcommittee shall, subject to direction by the Committee, determine its procedures.

Minutes of Proceedings of the Committee
July 11, 1985

SAMPLE LETTER

Dear Mr. _____:

The Standing Committee on the Ombudsman has reviewed your letter to me of March 10, 1985, and the enclosed documentation.

The Committee reached the decision that it should not pursue this matter. In the Committee's opinion, it cannot and should not, except in the most extraordinary situation, consider cases in which complainants disagree with, or are not satisfied by, the Ombudsman's conclusions. Otherwise, we would simply be taking over the Ombudsman's job and this is not what the Legislature intended when it created the Committee.

I wish to emphasize that in deciding not to pursue this matter, the Committee is in no way agreeing or disagreeing either with the Ombudsman's conclusions or with your comments about the Office of the Ombudsman. To repeat, the Committee does not, as a general policy, believe it should act in matters of this nature.

Yours truly,

Ed Philip, M.P.P.
Chairman
Subcommittee on
Communications from the Public





LEGISLATIVE ASSEMBLY
ASSEMBLÉE LÉGISLATIVE

The Honourable Hugh Edighoffer, M.P.P.,
Speaker of the Legislative Assembly.

Sir,

Your Standing Committee on the Ombudsman has the honour to present its 14th Report and commends it to the House.

Ronald K. McNeil

Ronald K. McNeil, M.P.P.
Chairman

Queen's Park
11 April 1986

**MEMBERSHIP OF THE STANDING COMMITTEE ON
THE OMBUDSMAN**

RONALD K. McNEIL
Chairman

HOWARD SHEPPARD
Vice-Chairman

REUBEN BAETZ
MAURICE BOSSY
PATRICK HAYES
D. JAMES HENDERSON
ALLAN McLEAN

GILLES MORIN
BERNARD NEWMAN
ED PHILIP
YURI SHYMKO

TODD J. DECKER
Clerk of the Committee

JOHN P. BELL
Counsel to the Committee

MERIKE MADISSO
Research Officer

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PART I

INTRODUCTION

In March, 1986 the Ombudsman tabled with the Speaker two Special Reports concerning reports issued by him pursuant to Section 22(3) of the Ombudsman Act to each of the Ministry of Health and the Ontario Northland Transportation Commission. In both of these reports the Ombudsman's recommendations were denied by those governmental organizations. The Ombudsman chose to report these cases in this way because of some perceived urgency on the part of the complainants.

The Committee met on April 1, 2, and 3, 1986 and considered the two cases with representatives of the Ombudsman and representatives of the governmental organizations concerned. Subsequent to its public consideration of these matters, the Committee adjourned in camera and in each case decided to support the recommendations of the Ombudsman and so report those decisions to the Legislature. The following is the Committee's formal report on its consideration of these two matters, its decisions and recommendations in each.

PART II

(a) Complaint re Mr. F. - Ministry of Health

This case involved a complaint by Mr. F., a private practice physiotherapist in Ontario whose application to transfer an inactive physiotherapy facility in the town of Millbrook, Ontario which facility includes the privilege of billing O.H.I.P. for physiotherapy services rendered, to the town of Belleville, Ontario. The complainant in 1983 had entered into an agreement for the purchase of the Millbrook facility on the condition that the O.H.I.P. billing privileges could be transferred to Belleville. Since that time the closing of the transaction has been extended pending the results of the Ombudsman's investigation. The Committee understands that a deadline of June, 1986 has been imposed on the fulfilment of the transfer condition.

As a result of his investigation the Ombudsman found the following:

1. In 1964 the Ontario Government instituted a comprehensive pre-paid physiotherapy plan for all Ontario residents. That plan included the licencing for O.H.I.P. billing purposes of all approved facilities.

2. Since 1966 the plan has been effectively closed to new applicants. Physiotherapists are permitted to purchase existing licences if the facility continues to be operated in the same general area.

3. When the complainant applied in 1983 for the approval of the transfer of the billing facility in question the Ministry indicated it would approve the purchase and the transfer of the billing facility only if it remained within the general Millbrook area.

4. The Ministry has refused the transfer to the Belleville area on the ground that its policy only allows for the transfer of such billing privileges when the purchaser agrees to maintain the facility within the same municipality or to move to

a municipality identified as underserviced by the Ministry. The Ministry has consistently taken the position that the Belleville area was not underserviced.

5. The Belleville area has no private licenced facility.

6. The complainant's application has received support from the community and from medical practitioners in the Belleville area.

7. Notwithstanding the Ministry's position that the Belleville area was not and is not underserviced, the results of a survey conducted by the Ombudsman of medical practitioners in the Belleville area indicated otherwise.

8. In January 1981, a joint Ministry of Health and Ontario Physiotherapy Association Committee identified that the county in which Belleville is located was underserviced. That Committee recommended that encouragement of private practice in the Belleville area.

9. The transfer of this inactive licence from Millbrook to Belleville will not affect the availability of physiotherapy services in the Millbrook area.

As a result of his investigation the Ombudsman concluded that:

(a) The Ministry had unreasonably omitted to follow the recommendations of the Ministry of Health, Physiotherapy Association Committee to provide a mechanism to assess outpatient physiotherapy needs; and

(b) The decision of the Ministry to refuse to allow the complainant to transfer the facility licence was unreasonable as it does not appear to be based on up-to-date information.

Accordingly, the Ombudsman recommended that:

"(a) The Ministry of Health:

- (1) Improve its methodology and data base for the routine assessment of outpatient physiotherapy service adequacy;
 - (2) Establish procedures for continuing needs review; and
 - (3) Develop an appropriate evaluation and feedback mechanism to assess outpatient physiotherapy needs; and
- (b) The Ministry of Health immediately grant permission to Mr. F. to purchase and transfer to his Belleville facility the privileges attached to facility licence number 34, Part I, Schedule 9, of Regulation 452 under the Health Insurance Act."

The Ministry has refused to implement the Ombudsman's recommendations on the grounds that there was adequate insured physiotherapy services available through the Belleville General Hospital and the Home Care Program in the area. The Ministry is of the view that the Belleville General Hospital continues to meet the need for outpatient physiotherapy services in the Belleville area. The Ministry also took issue with the Ombudsman's recommendation referable to the need to improve the methodology and established procedures relevant to the need for physiotherapy services in the Province of Ontario.

During the Committee's consideration of this case it became apparent that in fact the Ministry has methodologies and procedures in place which are sufficient to satisfy the requirements of the Ombudsman's first recommendation. For example, from the fiscal years 1981-1982 to 1985-1986 the Ministry has continuously monitored the service and staffing needs of the physiotherapy clinic located at the Belleville General Hospital, the only facility in Belleville where physiotherapy services are available. The Committee was advised by representatives of the Ministry that similar information is provided regularly to the Ministry for all other areas in the Province of Ontario. Accordingly, the Committee does not support the first recommendation of the Ombudsman.

The results revealed by the Ministry's monitoring procedures of the Belleville General Hospital are quite revealing. Whereas the Ministry has from 1983 represented to the complainant that its reason for refusal of his application for transfer was on the basis that Belleville had not been established as an underserviced area, during that period the full-time staff of the hospital clinic has increased from 8 to 10.5 while the number of outpatient visits has remained relatively constant.

This increase in staffing at the hospital facility since 1981 and 1982 has been consistent with the Ministry policy to deprivatize physiotherapy services in Ontario. That is, wherever a need is identified for added physiotherapy services, as in the Belleville area, the Ministry will cause or assist in the increase of that service in the public sector rather than in the private sector.

After carefully considering the relevant documentation provided to the Committee as well as the submissions of representatives of the Ombudsman and the Ministry of Health, the Committee has concluded that Recommendation (b) of the Ombudsman should be supported. This decision is not based upon whether there is currently a need for additional physiotherapists in the Belleville area, but on the manner in which the Ministry of Health has treated the application of the complainant for the transfer of the billing privileges and for the reasons given to him for the refusal of that application. Simply stated, in the Committee's opinion, the Ministry has dealt with this complainant unfairly.

The Ministry throughout the relevant period represented to the complainant, or his representatives, that it would be prepared to transfer the licence within the same location as it historically existed, but it would not permit the transfer to the Belleville area on the ground that it had not been demonstrated that the area was underserviced. This was done notwithstanding that between the fiscal years 1982-83 and 1985-1986 full-time staffing complement of the physiotherapy department of the Belleville General Hospital increased from 8 to 10.5. In other words, notwithstanding the Ministry's representations to the complainant that no need had been demonstrated for the Belleville area the number of physiotherapists on staff at the hospital increased by approximately 30%.

In fact, the Ministry failed at any time to advise the complainant that the real reason behind its decision was its policy to deprivatize health care services and particularly physiotherapy services in the Province of Ontario. The complainant had for a period of almost three years been lead to believe that should he demonstrate need in the Belleville area the application for transfer might be favourably considered.

Accordingly, the Committee recommends that:

"THE MINISTRY OF HEALTH IMMEDIATELY GRANT PERMISSION TO MR. F. TO PURCHASE AND TRANSFER TO HIS BELLEVILLE FACILITY THE PRIVILEGES ATTACHED TO FACILITY LICENCE NUMBER 34, PART I, SCHEDULE 9, OF REGULATION 452 UNDER THE HEALTH INSURANCE ACT."1

The Committee wishes to emphasize that its decision in this case and its recommendation to the Legislature should not be taken as any comment on the Ministry's policy of deprivatising health care services in the Province of Ontario and in particular those relating to physiotherapy services. That issue is irrelevant to the Committee's determination of this case. The Ministry's conduct vis-a-vis the complainant and his application is not.

**(b) Complaint re Mr. R. - Ontario Northland
Transportation Commission**

This case involved the complaint of Mr. R. who has been refused the opportunity by the Ontario Northland Transportation Commission to make pension contributions for the first two years of his employment with the Commission's predecessor.

As a result of his investigation the Ombudsman found that:

1. In May 1957 until May 1959 the complainant was employed by the predecessor of the Ontario Northland Transportation Commission (O.N.T.C.) as a "Temporary Construction Lineman".

2. In May 1959 the complainant was hired as a "Permanent Construction Lineman" and thereupon began making contributions to the relevant pension plan.

3. The complainant has worked for O.N.T.C. continuously to the present during which time he has made contributions to the pension plan.

4. In September, 1977 and in May, 1982 the complainant requested permission from the O.N.T.C. Pension Board to make pension contributions for the first two years of his employment (May 1957 to April 1959). These requests were denied.

5. In 1974 several O.N.T.C. employees had made similar requests to the Pension Board to make contribution for pension purposes for early non-contributory service, which requests were granted. In at least one case permission was granted to an employee whose circumstances were substantially identical to the complainant.

6. In 1978 the Pension Board adopted policy guidelines purporting to refuse any future applications from active employees to make contributions for non-contributory years of temporary employment but reserving such an opportunity for future employees.

7. Section 25.1 of the Regulations enacted under the Ontario Northland Transportation Commission Act provides that:

"For the purposes of these regulations, the names of all employees shall be entered on the staff records of the Commission when they first enter its service, provided that the names of employees whose early services if of a casual or intermittent nature shall not be regarded as having been entered on such staff records until they have completed six months' continuous services or six months' cumulative

service within a period of three consecutive years, unless in any case the Board shall decide otherwise,...". (emphasis added)

8. The Board's policy enacted in 1978 paragraph (b)(ii) provides that:

"where entry to service is presumed to be of a temporary or casual nature - pension deductions to commence with the first pay period which begins on or after the first day of the seventh month following entry into service". (emphasis added)

As a result of his investigation the Ombudsman concluded that the refusal by the O.N.T.C. Pension Board to accept the complainant's request to contribute to the pension fund for his first two years of continuous service was unreasonable in the particular circumstances of his case. Accordingly, the Ombudsman recommended that:

"The Pension Board allow Mr. R. to make contributions for the period from six months after his initial date of employment in May 1957."

The O.N.T.C. has refused to implement the Ombudsman's recommendation on the grounds primarily that it lacks the legal authority so to do. The Board has consistently interpreted the relief available under Section 25.1 of the Regulations and under its 1978 policy as applying only to periods of service of permanent employees. In this case the complainant's first two years of service were clearly temporary in nature and the Board has thus concluded neither the section of the regulation nor the policy are applicable.

The Board further does not believe that the previous circumstance wherein another employee was permitted to make such contributions in identical circumstances has any precedential value. The Board believes that its decision in that case was a mistake.

The Committee has reviewed thoroughly the relevant documentation provided in this case and has carefully considered the submissions made by representatives of the Ombudsman and those of the O.N.T.C. In the result the

Committee has decided that the recommendation of the Ombudsman should be supported.

The Committee wishes to emphasize that its decision to support the Ombudsman's recommendation is one solely on the merits of this particular case. Further, although the Committee has considered very carefully the interpretations of the relevant sections of the regulations and the relevant policies of the Board, it has decided not to state its interpretations or to indicate whether the interpretations of the Ombudsman or the Board are to be preferred.

Accordingly, the Committee recommends that:

"THE PENSION BOARD OF THE O.N.T.C. ALLOW MR. R. TO MAKE CONTRIBUTIONS FOR THE PERIOD FROM SIX MONTHS AFTER HIS INITIAL DATE OF EMPLOYMENT IN MAY OF 1957. THE COMMITTEE INTENDS THAT THE PERIOD OF THIS CONTRIBUTION WILL BE FOR EIGHTEEN MONTHS ENDING APRIL, 1959."2

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Standing Committee on the Ombudsman

Fifteenth Report 1986

2nd Session 33rd Parliament
35 Elizabeth II



LEGISLATIVE ASSEMBLY
ASSEMBLÉE LÉGISLATIVE

The Honourable Hugh Edighoffer, M.P.P.,
Speaker of the Legislative Assembly.

Sir,

Your Standing Committee on the Ombudsman has the honour to present its 15th Report and commends it to the House.

Ronald K. McNeil

Ronald K. McNeil, M.P.P.
Chairman

Queen's Park
18 December 1986

**MEMBERSHIP OF THE STANDING COMMITTEE ON
THE OMBUDSMAN**

RONALD K. McNEIL
Chairman

HOWARD SHEPPARD
Vice-Chairman

MAURICE BOSSY
PATRICK HAYES
D. JAMES HENDERSON
MICKEY HENNESSY
ALLAN McLEAN

GILLES MORIN
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PART I

INTRODUCTION

In his Annual Report, 1985-86, the Ombudsman identified four cases in which governmental organizations refused to implement recommendations made by the Ombudsman in reports submitted pursuant to Section 22(3) of the Ombudsman Act. By September 1986, however, when the Committee's hearings commenced, the governmental organizations in question had accepted the Ombudsman's recommendations and had agreed to implement them. This marks the first occasion, in the history of this Committee, in which it has not been required, as part of its consideration of the Ombudsman's Annual Report, to investigate any "recommendation denied" cases. This result is most commendable and serves to heighten the credibility and effectiveness of the Ombudsman's Office in the eyes of governmental organizations.

In his Report, the Ombudsman commented upon certain difficulties he and his office have experienced in dealing with the Office of the Public Trustee. The Ombudsman stated that in his opinion the Public Trustee's actions were interfering with the Ombudsman's ability to perform his functions under the Ombudsman Act. In this Report the Committee has recommended a solution to the apparent impasse between the Ombudsman and the Public Trustee. That solution requires the active and immediate participation of both the Ombudsman and the Public Trustee as well as the Attorney General. If a solution to this matter is not found immediately then in the Committee's opinion the effectiveness of both offices, at least in the eyes of the public, will be seriously impaired.

Near the end of the Committee's hearings in September, the Ombudsman announced the closing of his North Bay Regional Office, effective October 31, 1986. This news came as a surprise to members of the Committee as well as to other members of the House, particularly those whose ridings are located within the area served by the North Bay Office. At the request of the Member for Nipissing, the Committee reviewed with the Ombudsman the reasons for his decision to close the office.

The Committee accepts that Dr. Hill is genuine in his belief that, due to the need for fiscal restraint, the office should be closed. The Committee also acknowledges that as a general rule, the Ombudsman should be free to make decisions concerning the administration of his office without interference from this Committee or the Legislature. One of the Committee's mandates, however, is to ensure that the functions of the Ombudsman are being carried out to the standard required by the Ombudsman Act. Where it appears to the Committee that a decision of the Ombudsman, which on its face appears to be organizational, is likely to adversely affect the ability of the Ombudsman to perform his functions in a region of the Province, the Committee will take such actions as it considers necessary in the circumstances. In this case, the Committee heard from the Member for Nipissing that his constituents would be adversely affected by this decision. While the Committee has not yet formed any definite conclusions in this regard, it will pursue the matter in future hearings which address the required nature and quality of the service which the Ombudsman's Office should be providing in the North Bay area.

Since his decision to close the office was announced in September, the Ombudsman has agreed to make a field officer in North Bay available to the public at least three days per week. The Committee appreciates the Ombudsman's willingness to respond to the concerns that have been expressed.

In August 1986, the Committee completed the second part of its trip to the far northern communities of Northern Ontario. In Part VIII of this Report the Committee's comments and observations are set forth. The Committee notes in particular that the Ombudsman has responded positively to the Committee's concerns, expressed in its Twelfth Report, that the Ombudsman lacked a sufficient presence in the far northern communities. It is imperative that the current level of presence, as a minimum, be maintained. The people of the northern communities appear ready to demand a certain level of involvement on the part of the Ombudsman to help improve their living conditions. The Ombudsman should work assiduously to ensure that, to the fullest extent possible, these expectations are fulfilled.

PART II

THIRTEENTH REPORT OF THE STANDING COMMITTEE ON THE OMBUDSMAN

(a) Debate by Legislature

The Thirteenth Report of the Standing Committee on the Ombudsman was tabled in the Legislature on April 11, 1986. On November 4, 1986, the recommendations contained in Part IV (i) of the Thirteenth Report concerning the Ministry of Consumer and Commercial Relations (discussed below at page 5) were debated by the House and adopted without amendment. The Committee appreciates the fact that the House used this opportunity to deal with this pressing and long-standing matter. It is concerned, however, that the remainder of the Report has not yet been debated and urges that those matters which remain outstanding in the Thirteenth Report be placed on the Legislative agenda at the earliest possible time. In particular, the Committee draws attention to the "Special Report on the ways in which the Assembly may act to make its voice heard against political killings, imprisonment, terror and torture," which forms a part of its Thirteenth Report. It is the opinion of the Committee that much suffering can be avoided and even human lives saved by establishing a permanent mechanism for identifying the potential victims of human rights violations and bringing public attention to bear on them through the Legislature of Ontario.

(b) Responses from Governmental Organizations to Recommendations Contained in the Report

(i) Ministry of the Environment (Recommendation 2)

The Select Committee first considered this matter in its Twelfth Report. It made the following recommendation at that time:

That the Minister of the Environment accept in principle that the Crown may, in the appropriate circumstances pay a claimant interest due pursuant to a term of a contract with a contractor; that the Minister consider the merits of the complainant's claim for interest owing on the principal amount in question and formulate a decision whether or not to pay the claim.

The Ministry accepted in principle that it could in fact pay interest in appropriate circumstances, but declined to do so in the particular case. In its Thirteenth Report the Committee stated that "in fairness to both the Ministry and the complainant, the matter should be assessed by someone other than the Ministry." It therefore recommended:

That an independent adjudicator be appointed to assess the matter of whether or not interest is owed to the complainant.

The Committee was advised at its meetings in September that the process of appointing an adjudicator had begun, but had bogged down in a dispute over the terms of reference of the adjudication. The dispute centered on the questions of whether the adjudication should be conducted by written submission or whether parole evidence should also be allowed; clarification of the principal amount upon which interest should be calculated; the rate of interest to be applied by the adjudicator; and finally, how the costs of the adjudication should be borne.

The Committee is concerned at the length of time this matter has been pending. The events giving rise to the initial complaint occurred prior to 1980. The Committee recognizes that the adjudication will be the last opportunity for the complainant to state his case and have his rights determined and it is concerned that this should be accomplished in a way which is perceived by the complainant as fair. The Committee therefore recommends:

THAT THE ADJUDICATION BE STYLED AS A HEARING IN THE ORDINARY COURSE, WITH AN OPPORTUNITY GIVEN TO THE PARTIES TO CALL AND LEAD ANY EVIDENCE THEY CONSIDER APPROPRIATE;

THAT THE PRINCIPAL AMOUNT UPON WHICH INTEREST IS TO BE CALCULATED BE CLEARLY STATED AS A SUM NOT TO EXCEED \$27,730.00;

THAT THE RATE OF INTEREST APPLIED BY THE ADJUDICATION BE DETERMINED IN ACCORDANCE WITH THE COURTS OF JUSTICE ACT; AND

THAT THE COSTS OF ADJUDICATION BE PAID BY THE MINISTRY, EXCEPT FOR THE COMPLAINANT'S LEGAL COSTS.(1)

(ii) Ministry of Education (Recommendation 6)

In its Thirteenth Report, the Committee, with the following recommendation, endorsed a recommendation first made in its Third Report:

That the Ministry prepare an insurance program related to the injuries sustained in sports and/or shop activities by students in elementary and secondary schools which result in loss of future earnings; and that the Ministry report to the committee.

At the Committee's hearings in September a representative of the Ministry reported to the Committee that progress has at last been made. During the past year, a specially appointed committee within the Ministry met to gather information with respect to the parameters of coverage, the types of benefits available, the costs of such a program, potential sources of funding, and underwriting data. The Ministry also employed the services of an insurance consultant to assist in this process. According to the representative of the Ministry, this special committee was scheduled to report to the Deputy Minister on October 1, 1986, following which the matter would be taken up with the Executive Committee of the Ministry.

The Standing Committee sincerely hopes that 1986-87 will prove to be a year of decision with respect to this matter and urges the Ministry to come forward with a proposal as soon as possible.

(iii) Ministry of Consumer and Commercial Relations
(Recommendation 7)

In its Thirteenth Report the Committee made the following recommendations arising out of a seven year old dispute involving the Ministry of Consumer and Commercial Relations, HUDAC (the Housing and Urban Development Association of Canada) and members of a homeowners' association:

1.(a) That the Ministry reopen its file on the matter and take whatever steps are necessary to review the HUDAC and related inspection reports for those houses which are owned by persons who originally filed a deficiency list and who are still interested in some form of assistance from the Ministry. (It shall be the Homeowners' Association's responsibility to advise the Ministry of the names of these persons.)

(b) Following this review, the Ministry, at no cost to the homeowners, pay or cause payment to be made for the repair of those homes which have suffered damage as a result of major structural defects relating to original construction or in which there exist substantial defects relating to original construction as reflected in the HUDAC inspection reports.

(c) If any of the above-noted homeowners have repaired damage caused by major structural defects relating to original construction, or any substantial defects relating to original construction, as reflected in the HUDAC reports, then these homeowners should be compensated for their actual repair costs.

In the Committee's opinion, the Ministry should seek contribution and/or indemnity from HUDAC for the cost of these repairs. The Committee has concluded that HUDAC's actions have in some measure caused or contributed to the Ministry's predicament and to the statements made by the Minister wherein he made commitments to the homeowners.

These recommendations were debated and adopted by the Legislature without amendment on November 4, 1986. Nevertheless, the Committee would like to address the concerns raised by the Ministry at its September hearings.

In a letter to the Committee dated September 22, 1986, the Minister of Consumer and Commercial Relations, the Honourable Monte Kwinter, expressed concern that if the Ministry accepted the Committee's recommendation, a precedent would be established for all of the other occasions in which the Ministry has endeavored to mediate a dispute between a consumer and a commercial interest and has failed. The Committee does not share this concern and is of the view that the facts of this case are so unusual that there is no danger of it becoming a precedent in the way the Ministry fears. The Committee wishes to emphasize that it is the public promises of assistance made to the homeowners by the then Minister of Consumer and Commercial Relations which in its view form the basis of the

Ministry's obligation to compensate the homeowners. It is not the fact that the Ministry became involved in attempting to negotiate a settlement between the homeowners and contractors that is significant.

It is the Committee's intention to ask the Minister of Consumer and Corporate Relations how his Ministry will implement the recommendations adopted by the Legislature. The Committee will endeavor to assist the Ministry in any way it can to ensure that this case does not create a precedent for other cases in which the Ministry's efforts to negotiate a settlement between private parties fail to secure such a settlement.

(iv) Ministry of Labour

Workers' Compensation Board (Recommendations 7 & 8)

The recommendations made by the Committee in its Thirteenth Report concerning two cases in which the Workers' Compensation Board had rejected the recommendations made by the Ombudsman have both been accepted by the Workers' Compensation Board and dealt with to the satisfaction of the Ombudsman. The Committee again wishes to commend the Board for its actions as it did in its Thirteenth Report.

PART III

FOURTEENTH REPORT OF THE STANDING COMMITTEE ON THE OMBUDSMAN

(a) Debate by Legislature

The Fourteenth Report of the Standing Committee was tabled in the Legislature on April 11, 1986. The Report contained recommendations arising from two Special Reports tabled by the Ombudsman in March, 1986, concerning which there was a perception of urgency on behalf of the complainants. Both recommendations were adopted by the Legislature on June 24, 1986.

The Committee thanks the Legislature for its cooperation in dealing expeditiously with these matters.

(b) Responses from Governmental Organizations to Recommendations Contained in the Report

(i) Ministry of Health (Recommendation 1)

The Ministry accepted the Committee's recommendation as adopted by the Legislature and has dealt with the matter to the satisfaction of the Ombudsman.

(ii) Ministry of Northern Development and Mines Ontario Northland Transportation Commission (Recommendation 2)

At its hearings in September, the Committee was advised by a representative of the Ministry of Northern Development and Mines that the recommendation of the Committee has been accepted by the Pension Board of the Ontario Northland Transportation Commission and an Order-in-Council has been prepared to give effect to this decision.

Subsequent to its September hearings the Committee learned that the Order-in-Council was signed by the Premier as Acting Minister of Northern Development and Mines and was approved by the Lieutenant Governor.

The representative of the Ministry could not explain the reason for the Commission's apparent delay concerning this matter during the summer months.

PART IV

THIRTEENTH REPORT OF THE OMBUDSMAN (APRIL 1, 1985 TO MARCH 31, 1986)

(a) Organization and Operation of the Ombudsman's Office

Many changes have occurred in the Office of the Ombudsman since the Twelfth Report of the Ombudsman was tabled. In particular, the Committee notes the appointment of three field officers in Windsor, London and Sault Ste. Marie to work on a part-time basis providing intake and referral services as well as engaging in public education activities in their communities; the establishment of a grievance procedure for employees of the Ombudsman; the transcription of the Equal Times Newsletter into braille; and the addition of Cree to the eight or more languages already being used in the Ombudsman's "Fact Sheets".

The appointment of the three field officers is part of the "integrated regionalization" plan announced by the Ombudsman in 1985. The plan is a combination of regional, district and field offices. There were two existing regional offices in Thunder Bay and North Bay, district offices in Kenora, Timmins and Ottawa and now field offices in Windsor, London and Sault Ste. Marie. The objective of this plan is to make the Ombudsman's Office more visible and accessible to all Ontarians.

The Committee was surprised and concerned, however, to learn of the Ombudsman's decision to close his North Bay Regional Office effective October 31, 1986. The Ombudsman made this announcement at the September meetings of the Committee following his estimates submissions. Neither the Committee nor the Members for the area served by the North Bay Office had any foreknowledge of this announcement, nor had they been apprised of the apparent problems which lay behind the decision. The Committee found it difficult to reconcile the Ombudsman's stated commitment to regional services, particularly in the North, with the closure of a long-standing, major northern office, without prior discussion, and without considering other alternatives.

On October 29, the Committee met with the Ombudsman to discuss this matter further. The Committee notes that it was the intention of the Ombudsman to conduct a feasibility study over the next year to determine how best to serve the North Bay and area community after the regional office was closed. The Committee greatly approves of the Ombudsman's recent decision, however, to maintain service in the area by employing a part-time field officer while the feasibility study is being completed. The Committee believes that this level of service is more appropriate to the needs of a community as large as North Bay than simply a toll-free call to the Toronto Office. The Committee commends the Ombudsman for devising this solution to the problems Members identified in closing down local services altogether. Nevertheless, the Committee deeply regrets that it was not brought into the confidence of the Ombudsman beforehand in connection with such an important matter. The Committee therefore recommends:

THAT IN THE FUTURE, THE OMBUDSMAN BRING TO THE ATTENTION OF THE COMMITTEE FOR DISCUSSION DECISIONS WHICH HAVE THE POTENTIAL TO NEGATIVELY AFFECT OMBUDSMAN'S SERVICES IN SPECIFIC AREAS OF ONTARIO.(2)

(b) Statistical Analysis

A new computer system installed by the Ombudsman in August 1985, has made the Committee's task of monitoring the performance of the Ombudsman's Office by comparing the statistics of the past year with those of prior years more problematic than usual. For instance, it would appear on first glance that the Ombudsman has managed to decrease the length of time it takes to investigate a jurisdictional complaint from 229 days in 1984-85, to 113.2 days in 1985-86; an incredible accomplishment by any standard. This, however, was not in fact the case as the 1985-86 average included the so-called "fast action" cases (e.g. referrals, immediate resolutions, etc.) for which no file was opened in the 1984-85 year and thus no accurate record kept of the time taken to deal with those matters. Nevertheless, the Ombudsman was able to report that in relation to those complaints which the Committee considers to be the most critical, namely complaints in which the Ombudsman has supported the complainant, the average time taken to complete the case declined from 861 days in 1984-85 to 761 days in 1985-86, an improvement of

100 days. The Committee is pleased to see this evidence of a continuing effort on the part of the Ombudsman to assist the public with speed and efficiency and yet not compromise on his commitment to deal fairly and thoroughly with each complaint.

Due to the existence of the new computer system, the Committee considers it timely to undertake an in-depth study of statistical methods used by the Ombudsman. In particular the Committee is seeking to understand how the statistics generated by the new system differ from those of the old system. It is the Committee's intention to conduct this study during the winter of 1986-87 and thus be in a position to make better informed judgments by the spring of 1987 concerning such matters as the provision of Ombudsman's services to the North Bay area and the expansion of the Ombudsman's jurisdiction.

In its Thirteenth Report the Committee suggested that the Ombudsman begin to monitor current investigations that were being prolonged by factors outside his control, e.g., delays in obtaining a response from a Ministry. The purpose of this exercise was to allow the Ombudsman to detect patterns in the delays experienced and to bring these to the attention of the Committee and the concerned ministry and so seek to improve the situation. The Committee recognizes that the Ombudsman has not had an opportunity to complete this study, as the new computer system has not yet been in operation for a full fiscal year.

The Committee therefore recommends:

THAT IN HIS NEXT ANNUAL REPORT, THE OMBUDSMAN PROVIDE INFORMATION ON INVESTIGATIONS THAT ARE BEING DELAYED BY FACTORS OUTSIDE THE CONTROL OF HIS OFFICE. SUCH INFORMATION SHOULD INCLUDE THE NAME OF THE GOVERNMENTAL ORGANIZATION INVOLVED, THE LENGTH OF THE DELAY, AND THE REASONS FOR THE DELAY, IF KNOWN.(3)

(c) Public Trustee

In the Thirteenth Report of the Ombudsman and in remarks to the Committee in August, the Ombudsman made mention of difficulties he and his staff have encountered in investigations of cases involving the Office of the Public Trustee. Specifically, the Ombudsman complained of such things as delays in response to requests for information, refusals to provide proper access to files and failure to return phone calls. The Ombudsman stated that he was considering taking legal action to counter what he considered was lack of cooperation amounting to obstruction of the Ombudsman in his duty, an offence under the Ombudsman Act, R.S.O. 1980 c. 325, s. 28. In an effort to find an alternative and less costly solution to the problem, the Committee invited the Public Trustee, Albert McComiskey, to appear before the Committee at its September meetings in Toronto. Following this meeting, the Committee is of the view that the situation as presently exists regarding these two very senior public officials must be improved if the public is to be properly served.

There were three arguments put forward by the Public Trustee to explain his recalcitrance in permitting the Ombudsman to investigate matters relating to his Office: the statutory duty of the Public Trustee to keep confidential all information and documents that come into his possession except in particular circumstances; the duty of confidentiality arising from a solicitor and client, or near solicitor and client relationship, to certain patients; and finally, the view that the Ombudsman is acting outside his jurisdiction in investigating cases where the Public Trustee has acted pursuant to a court appointment.

The Committee is not unsympathetic to the arguments put forward by the Public Trustee. Nevertheless, the Committee considers that the Public Trustee has taken an overly legalistic view of his responsibilities and the legislation relating to them. For instance, while the Public Trustee's claims that the court has exclusive jurisdiction over his handling of the estates of deceased persons, that right of review is in fact quite narrow – confined to examining decisions where there has been a financial loss occasioned to the estate. This right of review does not deal with such complaints as delay or failure to communicate with beneficiaries; matters which do not concern the merits of financial decision made by the Public Trustee, but are rather administrative in nature.

These, the Committee considers, are properly subjects for investigation by the Ombudsman and do not cross over into the jurisdiction held by the courts. Other examples could be found which fall on one side or the other of this line, but it is enough for the Committee to state that it does not consider that the Ombudsman is barred for all purposes from acting on matters simply because the Public Trustee is acting under a court appointment.

In the same manner, the Committee considers that the Ombudsman has failed to appreciate that there exists a genuine statutory hurdle to full access, in every case, to files kept by the Public Trustee. The Committee is aware that this situation is anomalous with respect to other Provinces and other public bodies in Ontario which also deal with highly sensitive and otherwise confidential information, e.g. provincial psychiatric hospitals and the O.P.P. The Committee considers that this issue should be settled definitively by an amendment to the Ombudsman Act, so that confidentiality does not remain an issue of contention between the two offices.

The Committee therefore makes the following recommendations:

THAT THE OMBUDSMAN AND PUBLIC TRUSTEE SET OUT IN A FORMAL AGREEMENT THE PROPER JURISDICTIONAL SPHERE OF OMBUDSMAN INVESTIGATIONS OF COMPLAINTS AGAINST THE PUBLIC TRUSTEE. THIS AGREEMENT SHOULD INCLUDE RECOGNITION AND IDENTIFICATION OF THE OMBUDSMAN'S JURISDICTION IN RELATION TO THOSE MATTERS WHERE THE PUBLIC TRUSTEE IS ACTING PURSUANT TO A COURT APPOINTMENT WHICH DO NOT INFRINGE ON THE RIGHT OF REVIEW THAT CAN LEGITIMATELY AND REALISTICALLY BE ASCRIBED TO THE COURTS;

THAT THE OFFICE OF THE ATTORNEY GENERAL ASSIST THE OMBUDSMAN AND PUBLIC TRUSTEE IN REACHING THIS AGREEMENT; AND

THAT THE OMBUDSMAN ACT BE AMENDED IN THE PRESENT SESSION OF THE LEGISLATURE, OR AS SOON AS POSSIBLE THEREAFTER, TO PROVIDE FOR AN OVERRIDE OF THE CONFIDENTIALITY PROVISIONS OF THE PUBLIC TRUSTEE ACT AND ANY OTHER RULE UNDER WHICH THE PUBLIC TRUSTEE CLAIMS CONFIDENTIALITY.(4)

(d) Recommendations Denied by Governmental Organizations as Reported in the Thirteenth Annual Report of the Ombudsman

The Committee is pleased to report that the four "recommendation denied" cases summarized in the Ombudsman's Report were all satisfactorily resolved prior to the Committee's hearings in September. In each case the governmental organization has agreed to accept the recommendation of the Ombudsman.

The Committee wishes to commend the Ombudsman and his staff for their success in bringing about a negotiated settlement of these disputes. The Committee notes as well the Ombudsman's commendation of the positive approach now being taken by the Workers' Compensation Board, which in previous years had been the source of the majority of "recommendation denied" cases reported by the Ombudsman.

The Ombudsman reported to the Committee on the establishment of a Committee to Review Appeal Board Decisions by the Workers' Compensation Board in November 1985. This Committee is composed of three senior members of the Board who meet on an ad hoc basis with three senior staff of the Ombudsman's Office to discuss recommendations made by the Ombudsman. The Ombudsman has found that the existence of this Committee has significantly decreased the number of "recommendation denied" cases coming from the Board. The Committee wishes to endorse the Ombudsman's view that similar committees be established within other boards, ministries or agencies which have frequent dealings with the Ombudsman.

(e) Recommendations Denied by a Governmental Organization as Reported in a Previous Report of the Ombudsman

This section of the Committee's Report represents a departure from the usual format. It was occasioned by the Ombudsman's request to reopen a "recommendation denied" case which the Committee had failed to support for lack of evidence in its Twelfth Report.

(i) Ministry of Government ServicesPublic Service Superannuation Board(Detailed Summary No. 3 of the Eleventh Report of the Ombudsman)

This complaint arose from advice given to the complainant in 1966 by the Director of the Pension Funds Branch (now Employee Benefits Branch, Ministry of Government Services), in respect of the transfer of his pension credits from the Public Service Superannuation Fund (PSSF) to the Ontario Municipal Employees Retirement System (OMERS).

From 1958 to 1966 the complainant made pension contributions to PSSF. In 1966 he was offered a promotion to a new position, in which he was required to contribute to OMERS. His pension credits were transferred accordingly.

The Ombudsman, as a result of his investigation, concluded: that the Director of the Pension Funds Branch failed to supply complete information to the complainant through his employer, with respect to the consequences of the complainant transferring his pension credits; that the communications passing between the Director and the complainant's employer clearly included the assumption by the Director of some responsibility to advise the complainant on the merits of transferring his pension from PSSF to OMERS; and that the advice given was incomplete as it failed to alert the complainant to (upon transfer of pension benefits), the loss of his employer's contributions made to PSSF and to the loss of his entitlement to a pension calculated on his average highest three years of earnings. (The OMERS pension was then based on career average earnings.)

The Committee first considered this case in its Twelfth Report. While it agreed with the Ombudsman's analysis of the equities of the situation, it did not feel there was sufficient evidence presented at that time to allow it to properly quantify the loss suffered by the complainant. The Committee therefore considered it could not support the recommendation of the Ombudsman to award the complainant "reasonable compensation" for his loss.

The Ombudsman pursued the matter and at the Committee's September meetings requested that the Committee reconsider its earlier decision. The Committee agreed to reopen the case and receive evidence concerning the quantification of the complainant's loss.

On hearing this evidence the Committee determined that the appropriate amount as compensation for the complainant was \$2,239.91 (representing contributions of the complainant's employer to the PSSF which were left behind upon the transfer of the pension benefits), plus interest on that sum calculated annually at the prime rate existing at the time of the transfer, namely 6.5% (November 1967). This represents an interest accumulation of \$2,742.01 as of September 30, 1986. Added to the principle sum of \$2,239.91, the total compensation awards amounts to \$4,981.92.

The Committee therefore recommends:

THAT THE MINISTRY OF GOVERNMENT SERVICES AND/OR THE PUBLIC SERVICE SUPERANNUATION BOARD PAY TO THE COMPLAINANT THE SUM OF \$2,239.91 PLUS INTEREST, AT 6.5% CALCULATED ANNUALLY FROM NOVEMBER 30, 1967 TO THE DATE PAYMENT IS MADE, AS COMPENSATION FOR LOST PENSION BENEFITS OCCASIONED BY THE FAILURE OF THE DIRECTOR OF THE PENSION FUNDS BRANCH TO PROPERLY ADVISE THE COMPLAINANT OF THE CONSEQUENCES OF TRANSFERRING HIS PENSION CREDITS FROM THE PSSF TO THE OMERS.(5)

(f) Amendments to the Ombudsman Act

In its Thirteenth Report the Standing Committee recommended: "that the Attorney General table immediately in the Legislature a bill amending the Ombudsman Act." Amendments to the Ombudsman Act have been sought by the Ombudsman and the Committee for nearly eight years.

Another session of the Legislature has passed and though the amending bill continues to be promised, it has yet to appear.

The Committee therefore recommends:

THAT THE AMENDMENTS TO THE OMBUDSMAN ACT BE TABLED IN THE LEGISLATURE WITHOUT DELAY;
AND

THAT ALL PARTIES COOPERATE IN SPEEDING THE PROGRESS OF THE AMENDING BILL THROUGH THE HOUSE.(6)

The Committee reiterates its expectation that the bill will be referred to it, rather than the Standing Committee on the Administration of Justice, for clause by clause consideration.

Earlier in its Report, the Committee made a recommendation concerning a substantive amendment to the Ombudsman Act. This proposed amendment arose from the Committee's discussions with the Ombudsman and the Public Trustee over the jurisdictional and confidentiality issues existing between them (see page 14). The Committee has been assured of the cooperation of the Attorney General's Office in connection with this matter and therefore anticipates that there will be no delay occasioned by including this amendment with the others expected in the fall sitting of the Legislature.

PART V

EXPANSION OF THE OMBUDSMAN'S JURISDICTION

In its Thirteenth Report, the Committee identified three issues that require a detailed consideration before any fundamental decisions can be made on the question of expanding the jurisdiction of the Ombudsman:

- (a) is there a need for expansion of the jurisdiction of the Ombudsman in Ontario to include other provincially constituted organizations;
- (b) if there is such a need, what is its scope; and
- (c) who should perform the function covered by the expanded jurisdiction?

In response to the Committee's request, the Ombudsman tabled a Position Paper on Expanding the Jurisdiction of the Ombudsman. The Committee has yet to review this paper in detail and determine how it should proceed to deal with the proposals made by the Ombudsman.

In brief, the position paper presented by the Ombudsman recommended that the "ombudsman function" in Ontario be expanded to cover areas presently excluded from review. Dr. Hill cites public hospitals, children's aid societies and the Ontario New Home Warranty Plan as organizations over which the provincial Ombudsman should have jurisdiction. He is less certain that municipalities, for example, should be brought under his jurisdiction and suggests several alternative models to introduce a more localized "ombudsman function."

The Ombudsman believes strongly, however, that any process undertaken by the Committee to consider expanded jurisdiction should include participation by members of the public and the specific interest groups who would be most directly affected. While the Committee is not yet in a position to comment on the suggestions made by the Ombudsman in his Position Paper, it does concur with him that it is timely to thoroughly consider the issues of expanded "ombudsman function" in this province. The Committee sincerely appreciates the careful consideration which the Ombudsman has given to the issue of expanded jurisdiction and is looking forward to considering this matter further in the near future.

PART VIESTIMATES OF THE OMBUDSMAN FOR THE FISCAL YEAR
APRIL 1, 1986 TO MARCH 31, 1987

The Committee notes with approval the continuing efforts of the Ombudsman to streamline and improve the cost-effectiveness of his office. In particular the Committee commends the Ombudsman for such measures as subletting space in the Toronto Office to the Office of the Public Complainants Commissioner; moving the Ottawa district office to a less costly and more accessible store-front location; leasing an in-house data and word-processing system thereby lessening the dependence on external facilities; and developing a shortened list of more moderately priced hotels to reduce the travel expenses of Ombudsman staff. The evident success of these measures can be judged from the ability of the Ombudsman to carry through on his commitment to expand services through four new programs – a part-time field officers program; a special projects officer to deal with systemic problems; a community relations unit; and a special investigator on ethno-cultural issues – while receiving no additional funds in 1985-86 and proposing only a 3% increase in 1986-87.

The Committee ordered that the Chairman report the estimates of the Ombudsman for the fiscal year ending March 31, 1987, to the House without amendment.

PART VIICOMMUNICATIONS RECEIVED FROM THE PUBLIC

The Subcommittee on Communications from the Public met twice since the last report of the Committee.

The Subcommittee received correspondence from seven members of the public. Three of the letters were information only. The other four requested the Subcommittee to review the procedures used by the Ombudsman in investigating complaints. The Subcommittee has dealt with one of these requests and found no fault with the Ombudsman's investigation. It expects to meet and consider the three remaining matters in the near future. The Committee restates the position that its purpose, and that of the Subcommittee, is not to hear appeals from matters that either it or the Ombudsman have already decided.

PART VIII

COMMITTEE'S VISIT TO NORTHERN ONTARIO

In January 1984, the Committee travelled to several communities in northeastern Ontario in the first part of a two-part trip designed to allow Members to witness at first hand the issues of concern to people in the North and to heighten awareness about the function of the Ombudsman. This year, on August 25, 26, 27 and 28, the Standing Committee undertook the second half of that trip, visiting communities and reserves in northwestern Ontario. The Committee met with band councils and community members in Fort Severn and Big Trout Lake and with municipal representatives in Sioux Lookout and Thunder Bay. Visits were also arranged to Partridge Island on Hudson Bay, the Big Trout Lake Young Offenders Wilderness Camp and Senior Citizens Home (both under construction), the Armed Forces Radar Base at Sioux Lookout (which the Municipal Council has proposed to redevelop as a skills school for training residents of northern communities when it is abandoned by the Department of National Defence later this year), and to the Lakehead Psychiatric Hospital and Thunder Bay Jail.

The Committee was accompanied throughout the trip by the Ombudsman of Ontario, Dr. Daniel Hill; the Executive Director of the Office of the Ombudsman, Ms Elinor Meslin; the Director of Regional Services, Mr. Harvey Savage; and the Director of Native Programs, Mr. Allan Pelletier. The Controller, Mr. Allan Mills, and the Director of Investigations, Ms Gail Morrison, joined the Committee for its hearings in Sioux Lookout and Thunder Bay. The Thunder Bay District Manager, Mr. Michael Dunnill, was also present at the Thunder Bay hearing. The Committee wishes to thank Mr. Pelletier, in particular, for his considerable efforts in preparing the groundwork for the Committee's visits to the northern reserves and for helping to make the time spent there both insightful and rewarding.

In contrast to the Committee's prior trip to northeastern Ontario, the Committee on this trip was of the view that the profile of the Ombudsman in the North and among native people in particular had risen significantly. It credits this in large measure to the efforts undertaken by the Ombudsman to establish a more enduring connection with native people through his Native Programmes Officer.

The concerns that the Committee heard expressed by the native people and others in the northwest were numerous and complex. The Committee feels, however, that by direct personal contact with the people of the North, it has gained a great deal in understanding, though it has still not become expert. The Office of the Ombudsman has undertaken to investigate many of the concerns brought to the Committee's attention and the Committee will monitor these efforts. It is the view of the Committee that it can best demonstrate its commitment to helping the Ombudsman serve the people of the North by being mindful of the concerns it heard expressed and seeing that these concerns receive attention.

The Committee notes that there is a pressing need for a Federal Ombudsman to assist native people and northern residents generally. It therefore recommends:

THAT THE PREMIER OF ONTARIO RECOMMEND TO THE FEDERAL GOVERNMENT ESTABLISHMENT OF A FEDERAL OMBUDSMAN WITH JURISDICTION OVER ALL FEDERAL DEPARTMENTS, PROGRAMS AND AGENCIES THAT IMPINGE UPON THE LIVES OF PEOPLE IN THE NORTH.(7)

The Committee strongly supports the efforts of the Ombudsman of Ontario to make the provision of his services to people in the North more effective. One way the Committee has of assisting this effort is to raise awareness about the Office of the Ombudsman by continuing the kind of trip it has recently undertaken and bringing the Ombudsman process closer to the people of those communities. The Committee therefore recommends:

THAT FURTHER VISITS BY THE COMMITTEE, EITHER AS A WHOLE, OR IN SMALL GROUPS, BE PLANNED FOR THE NEAR FUTURE TO COMMUNITIES IN THE NORTH THAT WERE NOT PART OF THE JANUARY 1984 OR AUGUST 1986 TRIPS.(8)

PART IXSUMMARY OF RECOMMENDATIONS

1. THAT THE ADJUDICATION BE STYLED AS A HEARING IN THE ORDINARY COURSE, WITH AN OPPORTUNITY GIVEN TO THE PARTIES TO CALL AND LEAD ANY EVIDENCE THEY CONSIDER APPROPRIATE;

THAT THE PRINCIPAL AMOUNT UPON WHICH INTEREST IS TO BE CALCULATED BE CLEARLY STATED AS A SUM NOT TO EXCEED \$27,730.00;

THAT THE RATE OF INTEREST APPLIED BY THE ADJUDICATION BE DETERMINED IN ACCORDANCE WITH THE COURTS OF JUSTICE ACT; AND

THAT THE COSTS OF ADJUDICATION BE PAID BY THE MINISTRY, EXCEPT FOR THE COMPLAINANT'S LEGAL COSTS. (Page 4)

2. THAT IN THE FUTURE, THE OMBUDSMAN BRING TO THE ATTENTION OF THE COMMITTEE FOR DISCUSSION DECISIONS WHICH HAVE THE POTENTIAL TO NEGATIVELY AFFECT OMBUDSMAN'S SERVICES IN SPECIFIC AREAS OF ONTARIO. (Page 11)

3. THAT IN HIS NEXT ANNUAL REPORT, THE OMBUDSMAN PROVIDE INFORMATION ON INVESTIGATIONS THAT ARE BEING DELAYED BY FACTORS OUTSIDE THE CONTROL OF HIS OFFICE. SUCH INFORMATION SHOULD INCLUDE THE NAME OF THE GOVERNMENTAL ORGANIZATION INVOLVED, THE LENGTH OF THE DELAY, AND THE REASONS FOR THE DELAY, IF KNOWN. (Page 12)

4. THAT THE OMBUDSMAN AND PUBLIC TRUSTEE SET OUT IN A FORMAL AGREEMENT THE PROPER JURISDICTIONAL SPHERE OF OMBUDSMAN INVESTIGATIONS OF COMPLAINTS AGAINST THE PUBLIC TRUSTEE. THIS AGREEMENT SHOULD INCLUDE RECOGNITION AND IDENTIFICATION OF THE OMBUDSMAN'S JURISDICTION IN RELATION TO THOSE MATTERS WHERE THE PUBLIC TRUSTEE IS ACTING PURSUANT TO A COURT APPOINTMENT WHICH DO NOT INFRINGE ON THE RIGHT OF REVIEW THAT CAN LEGITIMATELY AND REALISTICALLY BE ASCRIBED TO THE COURTS;

THAT THE OFFICE OF THE ATTORNEY GENERAL ASSIST THE OMBUDSMAN AND PUBLIC TRUSTEE IN REACHING THIS AGREEMENT; AND

THAT THE OMBUDSMAN ACT BE AMENDED IN THE PRESENT SESSION OF THE LEGISLATURE, OR AS SOON AS POSSIBLE THEREAFTER, TO PROVIDE FOR AN OVERRIDE OF THE CONFIDENTIALITY PROVISIONS OF THE PUBLIC TRUSTEE ACT AND ANY OTHER RULE UNDER WHICH THE PUBLIC TRUSTEE CLAIMS CONFIDENTIALITY. (Page 14)

5. THAT THE MINISTRY OF GOVERNMENT SERVICES AND/OR THE PUBLIC SERVICE SUPERANNUATION BOARD PAY TO THE COMPLAINANT THE SUM OF \$2,239.91 PLUS INTEREST, AT 6.5% CALCULATED ANNUALLY FROM NOVEMBER 30, 1967, TO THE DATE PAYMENT IS MADE, AS COMPENSATION FOR LOST PENSION BENEFITS OCCASIONED BY THE FAILURE OF THE DIRECTOR OF THE PENSION FUNDS BRANCH TO PROPERLY ADVISE THE COMPLAINANT OF THE CONSEQUENCES OF TRANSFERRING HIS PENSION CREDITS FROM THE PSSF TO THE OMERS. (Page 17)

6. THAT THE AMENDMENTS TO THE OMBUDSMAN ACT BE TABLED IN THE LEGISLATURE WITHOUT DELAY; AND

THAT ALL PARTIES COOPERATE IN SPEEDING THE PROGRESS OF THE AMENDING BILL THROUGH THE HOUSE. (Page 17)

7. THAT THE PREMIER OF ONTARIO RECOMMEND TO THE FEDERAL GOVERNMENT ESTABLISHMENT OF A FEDERAL OMBUDSMAN WITH JURISDICTION OVER ALL FEDERAL DEPARTMENTS, PROGRAMS AND AGENCIES THAT IMPINGE UPON THE LIVES OF PEOPLE IN THE NORTH. (Page 23)
8. THAT FURTHER VISITS BY THE COMMITTEE, EITHER AS A WHOLE, OR IN SMALL GROUPS, BE PLANNED FOR THE NEAR FUTURE TO COMMUNITIES IN THE NORTH THAT WERE NOT PART OF THE JANUARY 1984 OR AUGUST 1986 TRIPS. (Page 23)

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Standing Committee on the Ombudsman

Sixteenth Report 1988

1st Session, 34th Parliament
37 Elizabeth II



LEGISLATIVE ASSEMBLY
ASSEMBLÉE LÉGISLATIVE

The Honourable Hugh Edighoffer, M.P.P.,
Speaker of the Legislative Assembly.

Sir,

Your Standing Committee on the Ombudsman has the honour
to present its 16th Report and commends it to the House.

A handwritten signature in black ink, appearing to read 'Cindy Nicholas', with a large, stylized initial 'C'.

Cindy Nicholas, M.P.P.,
Chairman.

Queen's Park
June, 1988

MEMBERSHIP OF THE STANDING COMMITTEE ON
THE OMBUDSMAN

CINDY NICHOLAS
CHAIRMAN

WALT ELLIOT
VICE-CHAIRMAN

MAURICE BOSSY

KEITH MacDONALD

DOUG CARROTHERS

ALLAN McLEAN

BRIAN CHARLTON

ED PHILIP

D. JAMES HENDERSON

JIM POLLOCK

TONY LUPUSELLA

TODD DECKER
Clerk of the Committee

JOHN P. BELL
Counsel to the Committee

CATHERINE EVANS
Research Officer

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PART I INTRODUCTION

This Report of the Standing Committee on the Ombudsman reviews the Fourteenth Annual Report of the Ombudsman for the fiscal year 1986-87 and a Special Report dealing with three cases. Though tabled more than a year ago, the Ombudsman's Annual Report raises matters of importance and urgency for the Legislature. One of these is the introduction of amendments to the Ombudsman's Act which has been promised for many years, but has yet to materialize. Another is the consideration of the Ombudsman's Report on Expanded Jurisdiction which the Committee will undertake during the summer months.

The Annual Report and the Special Report also gave the Committee their first "recommendation denied" cases in three years (with the exception of the Argosy case heard last year). The Committee heard eight cases. The Committee is pleased to report that in all but two cases where the Committee supported the recommendation of the Ombudsman, the Committee was able to communicate its decision orally and obtain a commitment from the governmental organization concerned that the Committee's recommendation would be implemented without further debate by the Legislature. The Committee sincerely hopes that the last two cases will be similarly dealt with once the Committee's Report is tabled.

In addition to reviewing the Ombudsman's Annual and Special Reports, this Report will look at matters outstanding from prior Committee and Ombudsman Reports, the Estimates of the Office of the Ombudsman and the various activities undertaken by the Committee since the time of its last Report.

PART II THIRTEENTH REPORT OF THE STANDING COMMITTEE ON THE OMBUDSMAN

(a) Debate by Legislature

The Thirteenth Report of the Standing Committee on the Ombudsman was tabled in the Legislature on April 11, 1986. Various parts of the Report have been debated by the Legislature, however, some matters have not been dealt with despite repeated urgings from the Committee. In particular, the Committee draws attention to the "Special Report on the ways in which the

Assembly may act to make its voice heard against political killings, imprisonment, terror and torture," which forms part of the Thirteenth Report. Commenting on this Report in its Fifteenth Report, the Committee stated that:

it is the opinion of the Committee that much suffering can be avoided and even human lives saved by establishing a permanent mechanism for identifying the potential victims of human rights violations and bringing public attention to bear on them through the Legislature of Ontario.

The Committee feels strongly about the importance of this matter and urges the Legislature to debate the Special Report at the earliest opportunity.

PART III FIFTEENTH REPORT OF THE STANDING COMMITTEE ON THE OMBUDSMAN

(a) Debate by Legislature

The Fifteenth Report of the Standing Committee on the Ombudsman was tabled in the Legislature on December 2, 1986. There has been no debate of the Report.

(b) Responses from Governmental Organizations to Recommendations Contained in the Report

(i) Ministry of the Environment (Recommendation 1)

This case has now been considered by the Committee on four separate occasions. In its Twelfth Report the Select Committee recommended:

That the Minister of the Environment accept in principle that the Crown may, in the appropriate circumstances pay a claimant interest due pursuant to a term of a contract with a contractor; that the Minister consider the merits of the complainant's claim for interest owing on the principal amount in question and formulate a decision whether or not to pay the claim.

The Ministry accepted in principle that it could in fact pay interest in appropriate circumstances but declined to do so in the particular case. In its Thirteenth Report the Committee stated that "in fairness to both the Ministry

and the complainant, the matter should be assessed by someone other than the Ministry." It therefore recommended:

That an independent adjudicator be appointed to assess the matter of whether or not interest is owed to the complainant.

In response to this recommendation the process of appointing an adjudicator was begun, but bogged down in a dispute over the terms of reference of the adjudication. In its Fifteenth Report the Committee expressed some concern at the length of time the matter had been pending. The Committee recognized that the adjudication would be the last opportunity for the complainant to state his case and have his rights determined, and was concerned that this should be accomplished in a way perceived by the complainant as fair. The Committee therefore recommended:

That the adjudication be styled as a hearing in the ordinary course, with an opportunity given to the parties to call and lead any evidence they consider appropriate;

That the principal amount upon which interest is to be calculated be clearly stated as a sum not to exceed \$27,730.00;

That the rate of interest applied by the adjudication be determined in accordance with the Courts of Justice Act; and

That the costs of adjudication be paid by the Ministry, except for the complainant's legal costs.

Representatives of the Ministry were invited to attend the Committee's meeting on March 1, 1988, as there had been no progress made towards appointing an adjudicator. A representative of the Ministry advised the Committee that an offer to adjudicate under the terms set by the Committee would be made the following week. The representative further advised the Committee that the Ministry will take all steps to expedite the adjudication and will keep the Committee advised of its progress.

Representatives of the Ministry, including the Deputy Minister, were recalled to the Committee again in May to explain why no letter had yet been sent. The Deputy Minister in a statement to the Committee expressed regret in the way this matter has been handled by his Ministry. He stated that while it is the policy and practice of the Ministry to live up to commitments given to a legislative committee within the agreed time frame, its performance in the present case has fallen far short of that standard. The Ministry has now, however, prepared a letter containing the proposed terms of the adjudication and listing the names of three alternative independent adjudicators. The Deputy Ministry will also ensure that the Committee is kept informed of all developments in the case. The Committee sincerely hopes that real progress will now be made and that the matter can be quickly concluded.

(ii) Ministry of Education

In its Third and Thirteenth Reports, the Committee recommended:

That the Ministry prepare an insurance program related to the injuries sustained in sports and/or shop activities by students in elementary and secondary schools which result in loss of future earnings; and

That the Ministry report to the Committee.

In its Fifteenth Report the Committee urged the Ministry to develop a proposal as quickly as it could. A specifically appointed committee within the Ministry was scheduled to report to the Deputy Minister on October 1, 1986. By letter of January 1987, the Ministry has advised the Committee that it does not intend to pursue the matter of disability coverage for students. In all of the circumstances, the Committee has determined that it will not proceed further with this matter.

(iii) Ministry of Consumer and Commercial Relations

As reported in the Fifteenth Report of the Committee on November 4, 1986, the Legislature debated and adopted the Committee's recommendations concerning this case made in the Thirteenth Report. Representatives of the Ombudsman's Office have advised the Committee that the Ministry is in the

process of assembling the information it needs about the homes and original homeowners. The complainants and the Ombudsman are satisfied to wait until the summer when the Ministry has said it will be prepared to act.

(iv) Ministry of Government Services Public Service
Superannuation Board (Recommendation 5)

In its Fifteenth Report the Committee recommended:

That the Ministry of Government Services and/or the Public Service Superannuation Board pay to the complainant the sum of \$2,239.91 plus interest, at 6.5% calculated annually from November 30, 1967 to the date payment is made, as compensation for lost pension benefits occasioned by the failure of the Director of the Pension Funds Branch to properly advise the complainant of the consequences of transferring his pension credits from the PSSF to the OMERS.

Representatives of the Public Service Superannuation Board attended the Committee's hearings in March 1988. They stated that they have been unable to implement the Committee's recommendations because they have no authority in their statute to authorize such a payment. After considering the matter the Committee accepted the arguments put forward by the Board and by motion recommended:

That the Committee delay action on this case until amendments to the Public Service Superannuation Act are introduced in the House. (Recommendation 1)

The Committee will, however, be discussing the matter of the amendments with representatives of the Management Board of Cabinet for the purpose of doing what it can to expedite a long overdue settlement of this dispute. (The Committee was advised by the Public Service Superannuation Board that the responsible ministry is no longer Government Services, but Management Board.)

PART IV FOURTEENTH REPORT OF THE OMBUDSMAN (APRIL 1, 1986 TO MARCH 31, 1987)

(a) Organization and Operation of the Ombudsman's Office

The Office of the Ombudsman has continued to demonstrate commitment to providing services in all regions of Ontario. The Committee is pleased to note that the part-time field officer program, which began as an experiment two years ago has proven successful and will be continued on a permanent basis. The Committee is particularly pleased that the part-time officer, recently made full-time, who remained in North Bay following the closing of the regional office on October 31, 1986, has proven effective in maintaining the profile of the Ombudsman's Office in that community. The Committee wishes to encourage the Ombudsman in his efforts to locate a site for a new permanent office in North Bay as quickly as possible.

The Committee welcomes the appointment of a Special Investigator for Ethnocultural Issues. The Committee has observed in the past that such specially designated positions, as for instance the Native Programme Officer and Special Projects Officer for the Disabled, have allowed stronger ties to be made to their respective constituent groups than is otherwise the case.

(b) Statistical Analysis

The statistics reported by the Ombudsman for the fiscal year 1986-87 show a significant increase in the number of closed complaints and information requests over the previous two years (17,326 in 1986-87 versus 14,210 in 1985-86 and 13,458 in 1984-85). The Ombudsman points to the success of the field officer program as the major cause of this increase. He observes, however, that much of the increase relates to matters outside his jurisdiction. In particular he notes that the number of complaints and inquiries concerning the federal government that his field officers receive is very high (1,135 in 1986-87 versus 863 in 1985-86). The Committee concurs in the view of the Ombudsman that these figures point to a need for a federal ombudsman. The Committee endorses the recommendation it made in its Fifteenth Report, "that the Premier of Ontario recommend to the federal government, establishment of a federal ombudsman with jurisdiction over all federal departments, programs and agencies that impinge upon the lives of people in the north."

A second cause of the increase in closed complaints in 1986–87 is the increase in the number of formal recommendations made in the year (148 in 1986–87 versus 34 in 1985–86 and 78 in 1984–85). The Ombudsman explained that this figure is somewhat anomalous and will decrease. The bulk of the increase relates to Workers' Compensation Board complaints. The establishment of the Workers' Compensation Appeals Tribunal has significantly changed the relationship of the Ombudsman to the workers' compensation process. In order to avoid prolonging the overlap between the old and new workers' compensation systems, the Ombudsman determined that the best course of action would be to conclude as many complaints as possible that remained from the old system. The Workers' Compensation Board in turn moved quickly to accept the Ombudsman's recommendations in all but the four cases reported in this Committee's report. The Committee commends the Ombudsman and the Board for their efforts.

Finally the Committee notes a continuing rise in the number of complaint files which the Ombudsman has closed using his discretion under section 18 of the Ombudsman Act. In 1984–85 the number was 924, in 1985–86 it was 1,382, and in 1986–87 it had risen to 1,924.

The statistics reported by the Ombudsman continue to show an improvement in the speed with which complaints are handled. In 1985–86 the average time taken to complete a case in which the Ombudsman made a recommendation in favour of the complainant was 761 days. In 1986–87 that figure was less than 720 days.

Of particular concern to the Committee in its Fifteenth Report was the identification of delays in the Ombudsman process that were being caused by governmental organizations. The new computer system installed by the Ombudsman in 1985 promised to make this information available. Regrettably the statistics provided for 1986–87 were not properly verified. The Committee therefore concluded that it would not be appropriate to comment on them at this time. A reliable survey of problem areas will be forthcoming for 1987–88.

On a final matter, the Committee wishes to commend the Ombudsman for undertaking a comprehensive study of the use of statistics in his office. The study, prepared by John Kinley, was tabled with the Committee in April 1988.

It will no doubt lead to an even greater improvement in the way statistics are developed and used to better the service provided by the Ombudsman to the people of Ontario.

(c) Public Trustee

In its Fifteenth Report the Committee discussed at some length the issue of the difficulty that the Ombudsman had encountered in investigations involving the Office of the Public Trustee. The Committee is pleased to hear that those difficulties are now in the past. The appointment of a new Public Trustee has allowed relations between the two offices to be re-established on a more cooperative footing. The Committee hopes that evidence of the new relationship will continue to grow.

(d) Amendments to the Ombudsman Act

In its Fifteenth Report, the Committee recommended: "that the amendments to the Ombudsman Act be tabled in the Legislature without delay; and that all parties cooperate in speeding the progress of the amending bill through the House."

Amendments to the Ombudsman Act have been proposed by the Ombudsman and the Committee in most, if not all, of the past 11 years. To date no amendments have been passed. The Committee understands that again this year amendments have been prepared and provided to the Attorney General. The Committee regrets that a bill has not been forthcoming. The Committee recommends:

**That the Attorney General give priority to introducing and approving amendments to the Ombudsman Act in the current or next session of the Legislature.
(Recommendation 2)**

The Committee notes that a particularly urgent matter is the amendment to the Act which would permit a governmental organization to reconsider a decision which under its own legislation is final. The Ombudsman has encountered an increasing number of cases where a governmental organization agrees with the Ombudsman that a rehearing should be held, but finds itself functus officio. The Committee believes that this situation constitutes a very grave injustice and should be remedied without delay.

(e) Matters Outstanding from Previous Ombudsman and Committee Reports

(i) Ministry of Labour
(Workers' Compensation Board)

In its Eleventh Report (complaint No. 22) the Committee recommended:

That the Workers' Compensation Board reverse its decision of September 20, 1983 and grant the complainant a temporary supplement to his permanent partial disability award. It is understood that the Board retains full discretion in assessing and quantifying the amount of such supplement.

The Workers' Compensation Board implemented the Committee's recommendation awarding the complainant a temporary supplement of \$927.32 for a period of one year. The complainant was not satisfied with the Board's decision and asked the Ombudsman to raise the matter of the reasonableness of the award with the Committee.

The Committee concurs in the opinion of the Ombudsman that the wording of the Committee's recommendation precludes it from further inquiry. The Committee regrets the sense of dissatisfaction which the resolution of this matter has left the complainant, but is confident that the Workers' Compensation Board has acted in good faith in reaching its decision.

(f) Recommendations denied by Governmental Organizations as reported in the 1986-87 Annual Report of the Ombudsman

In the Ombudsman's Annual Report, 22 cases were reported as recommendation denied cases. At the time of the Committee's hearings in January 1988, all but five of these cases had been resolved between the Ombudsman's Office and the governmental organization. Of these five, four concerned the Workers' Compensation Board and the fifth, the Ministry of Agriculture and Food.

In all but one case involving the Workers' Compensation Board, the Committee voted to support the recommendation of the Ombudsman. The Committee is pleased to report that the Workers' Compensation Board and the

Ministry of Agriculture and Food have advised the Committee by letter that they accept and are proceeding to implement the Committee's recommendations. In keeping with established practice therefore, the Committee's report on these decisions will be less detailed than otherwise.

The Committee wishes to thank the Workers' Compensation Board and the Ministry of Agriculture and Food for their prompt responses to the Committee's decisions.

i) Workers' Compensation Board

a) Detailed Summary No. 14

This case concerns a decision by the Workers' Compensation Appeal Board of April 11, 1983, denying compensation for a back disability.

The complainant in the case was an iron worker, who in the course of his employment fell and twisted his right knee while stepping back from a machine on November 17, 1980. On November 19, 1980, the knee gave out while the complainant was climbing out of a railway car. An orthopedic surgeon subsequently diagnosed a tear of the medial meniscus. The complainant continued working until March 11, 1981, when he laid off to have the tear surgically repaired. He returned to work on June 15, 1981, and continued until July 31, 1981, when he laid off due to back disability.

The opinion of the complainant's general practitioner was that the complainant's lumbar disc disease – the direct cause of the back disability – had been exacerbated by his right knee injury. This opinion was reinforced by a subsequent opinion by an orthopedic surgeon who identified such factors as limping, physiotherapy for the knee and crutch-walking (post-surgical) as contributing to the "probability" that the complainant's disc disease was aggravated by the knee injury. The opinion of a third doctor, a surgical consultant retained by the Workers' Compensation Board, flatly rejected any connection between the back disability and a shifting of body weight due to the knee injury. This doctor did not elaborate upon his reasons for this opinion, but simply stated "no".

In its decision of April 11, 1983, the Appeal Board considered the following factors as significant in concluding that the back disability was unrelated to the knee injury: the medical diagnosis of lumbar disc disease; the medical evidence of early arthritic changes in the complainant's back; an episode of back pain and physiotherapy in 1975; a single complaint of back pain by the worker on December 8, 1980, after getting up from a nap at work; and the lack of evidence of a complaint of back pain by the worker between returning to work on June 5, 1981, and laying off on July 31, 1981.

Following his investigation the Ombudsman concluded that the evidence before the Board had established a relationship between the complainant's back disability and the compensable knee injury and that the decision of the Appeal Board was "unreasonable".

He therefore recommended pursuant to section 22 of the Ombudsman Act:

That the appeal Board decision of April 11, 1983 be cancelled and the complainant be granted entitlement for low back disability as being related to the compensable right knee disability, sustained on November 17, 1980, on the basis of an acute aggravation of pre-existing degenerative disc disease.

The Workers' Compensation Board declined to follow the recommendation of the Ombudsman stressing the lack of evidence of complaint of back pain by the worker until his lay-off on July 31, despite opportunity to do so. The Board also asked its senior surgical consultant to reexamine the file and the one word opinion he had given in 1981. In a memo of March 30, 1987, the Board's doctor confirmed his earlier opinion and added that he very much doubted that either a limp resulting from the injury, or the time spent on crutches would aggravate the worker's back condition. In a letter to the Ombudsman of October 9, 1987, the Board outlined its position and attached a copy of its consultant's 1987 opinion.

After considering the case and hearing from representatives of both the Ombudsman and the Workers' Compensation Board, the Committee decided by motion not to support the recommendation of the Ombudsman. Like the Workers' Compensation Board, the Committee is of the view that the lack

of evidence of a complaint of back pain following the surgery and the complainant's return to work is significant. In a letter of July 2, 1986, from the accident employer to the Ombudsman, which was led in evidence before the Committee, the complainant was reported to have made regular visits to the company medical department between his return to work on June 15 and his layoff on July 31. The company states that the visits all concerned the complainant's right knee with no mention made of back discomfort to the degree of eventual layoff. The Committee believes that if the complainant was suffering increasingly severe back pain after his return to work, as contended on his behalf by the Ombudsman, that these visits provided sufficient opportunity to make this known. Indeed the first medical evidence of back pain came early in August following the July 31st layoff, when the complainant saw his family doctor. In the absence of a stronger connection between the events associated with the knee injury (including the surgery in March), and the onset of back pain, the Committee cannot conclude that the decision of the Appeal Board was "unreasonable".

The Committee notes that there was some discussion during the presentation of the case concerning what the complainant said he told certain people about experiencing back pain following his return to work. Regrettably, the evidence of these people was not sought out by either the Ombudsman's Office or the Workers' Compensation Board. The Committee can only state therefore, that while it would have welcomed the presentation of any such evidence as existed, it cannot take into account what that evidence might have contained had either party made an effort to obtain it.

b) Detailed Summary No. 19

This was a case in which the Appeal Board declined to award benefits to the complainant for bilateral hearing loss and tinnitus. After completing his investigation, the Ombudsman recommended that the Appeal Board decision of October 28, 1985, should be revoked and the complainant awarded benefits for noise-induced hearing loss and tinnitus.

The Committee, after hearing from representatives of both the Ombudsman's Office and the Workers' Compensation Board and considering the case,

decided by motion to accept the opinion of the Ombudsman and passed the following recommendation:

That the Workers' Compensation Appeals Board revoke its decision of October 28, 1985 and award appropriate benefits to the complainant for bilateral hearing loss and tinnitus. (Recommendation 3)

The Board has advised the Committee that it has accepted the Committee's recommendation. The Ombudsman has informed the Committee that he considers the Board's actions to be adequate and appropriate. The matter is therefore resolved.

The Committee notes that the Board's present hearing loss policy which treats the availability of benefits flowing from traumatic hearing loss differently from gradual hearing loss is currently under review. The Committee wishes to encourage the Board to complete its review as quickly as it can and to adopt a more equitable approach to hearing loss.

c) Detailed Summary No. 20

In this case the Workers' Compensation Appeal Board denied benefits to a worker for hip disability arising subsequent to a back injury. The worker's claim was based on the aggravation of an underlying degenerative disease affecting the hip joint. After completing an investigation of the complaint, the Ombudsman formed the opinion that the Appeal Board's decision of June 18, 1986 stating that the development of symptoms in the complainant's hip was coincidental and not related to the back injury was "unreasonable". Accordingly, the Ombudsman recommended that: the Appeal Board's decision should be revoked and the worker should be granted entitlement to benefits for his hip disability.

After hearing from representatives of the Ombudsman's Office and the Workers' Compensation Board and considering the case, the Committee decided by motion to support the Ombudsman's recommendation. The Committee recommended:

That the Appeal Board decision of June 18, 1986 be set aside and that the Workers' Compensation Board award benefits to the complainant for his hip disability, forthwith. (Recommendation 4)

The Board has subsequently advised the Committee that it has agreed to implement the Committee's recommendation. This will involve bringing the worker in for a pension examination before the exact level of payment is fixed. The Ombudsman has advised the Committee that he considers the Board's response to be both adequate and appropriate. The Committee would again like to commend the Board for its prompt response. The matter is thus resolved.

d) Detailed Summary No. 21

This case concerned the refusal of the Workers' Compensation Board to award compensation to a worker for a back disability. After conducting an investigation, the Ombudsman concluded that the Board's decision that the back disability did not arise out of or in the course of his employment as a letter carrier was unreasonable. He therefore recommended: that the Workers' Compensation Appeals Board decision of December 19, 1983 be revoked and the complainant be given entitlement to benefits for the period August 26, 1980 to September 1, 1981.

After hearing from representatives of the Ombudsman's Office and Workers' Compensation Board and considering the matter, the Committee decided by motion to accept the Ombudsman's recommendation, and report its acceptance to the House with the following recommendation:

That [the complainant] be granted entitlement to benefits on the basis of disablement arising out of and in the course of his employment for the period August 26, 1980 to September 1, 1981. (Recommendation 5)

Subsequent to the Committee's decision, the Board has advised the Committee that it has accepted the Committee's recommendation and is taking steps towards implementation. The Ombudsman has advised the Committee that he considers the Board's responses to be both adequate and appropriate. The matter is therefore concluded.

During consideration of this case the Committee heard evidence that back problems, while not usually so severe as in the present case, are nevertheless common among co-workers of the complainant. The Committee believes that the Workers' Compensation Board should begin gathering statistical information regarding back disabilities from letter carriers employed by the accident employer.

ii) Ministry of Agriculture and Food

This case concerns a complaint by a group of goat's milk producers against the Farm Products Marketing Commission. The Commission had refused to compensate the producers for losses suffered when a processor declared bankruptcy leaving them unpaid for a number of prior milk deliveries. The Commission administers a "Milk Fund", the purpose of which is to provide compensation to milk producers who have suffered losses in such situations.

Following his investigation of the complaints, the Ombudsman concluded that the decision of the Milk Fund administrators to deny compensation was unreasonable. He recommended that the producers be reimbursed for their milk deliveries during the first 60 day period of their claims. Sixty days is the maximum claim period allowed under the Regulations. The first 60 day period was chosen as representing the period for which the processors' records of deliveries could be considered the most reliable.

After hearing from representatives of both the Ombudsman's Office and the Ministry of Agriculture and Food and considering the issues and arguments raised by both parties, the Committee by motion voted to support the recommendation of the Ombudsman. The Committee recommended:

**That the Farm Products Marketing Commission pay the first 60-day period on each of the claims arising from the financial collapse of the processor.
(Recommendation 6)**

The Committee was pleased to receive a letter from the Ministry of Agriculture and Food dated March 1, 1988, indicating that the Ministry has accepted the recommendation of the Committee and that the Farm Products Marketing Commission voted on February 11, 1988 to cause payments to be made to the complainants. The Ombudsman has advised the Committee that it considers the Commission's actions to be acceptable. The matter is therefore concluded.

In connection with this matter, however, the Committee wishes to observe and informally recommend to the Ombudsman that in cases such as this where the credibility of complainants and witness concerning the interpretation of events and circumstances is involved, that the Ombudsman use the authority he has been given by statute and take evidence under oath. Such a precaution could, in the Committee's view, avoid the necessity of cases like this one having to appear before the Committee for resolution.

PART V SPECIAL REPORT OF THE OMBUDSMAN

(a) Recommendations denied by Governmental Organizations as reported in a Special Report of the Ombudsman.

In addition to the recommendation denied cases reported in the Ombudsman's Annual Report and discussed in the previous part, the Ombudsman tabled a Special Report containing three recommendation denied cases, the resolution of which he believed should not be delayed until the next annual report. Two of these cases, known simply as Mr. B and Ms. D involve the Criminal Injuries Compensation Board. The third case known as Chief B, involves the Ministry of Natural Resources.

i) Criminal Injuries Compensation Board

a) Mr. B

This case concerned the refusal of the Criminal Injuries Compensation Board to award compensation to the complainant for injuries suffered in an assault. The assault occurred in the home of a woman with whom Mr. B had spent the evening. The assailant was the former common-law husband of the woman who apparently broke into the house through a basement window and attacked Mr. B. According to police reports, Mr. B was in bed with the woman at the time of the attack. According to Mr. B, he was resting fully clothed and alone on the chesterfield in the living room. There is no doubt that he was intoxicated at the time.

The injuries suffered by Mr. B were severe. Medical reports indicate that he suffered numerous kicks to the head, chest, neck and arms. A fracture to the right cheek bone has resulted in permanent damage to the right facial nerve causing numbness of the cheek and upper lip. Headaches and ringing in the

ears have also persisted following the assault. The complainant has been unable to return to work and now lives on a disability pension. The assailant was convicted of assault causing bodily harm and sentenced to a jail term of six months.

In a hearing on December 1, 1982, the Criminal Injuries Compensation Board denied compensation to the complainant relying on section 17(1) of the Compensation of Victims of Crime Act. That section of the Act states:

s. 17(1) In determining whether to make an order for compensation and the amount thereof, the Board shall have regard to all relevant circumstances, including any behaviour of the victim that may have directly or indirectly contributed to his injury or death.

The Board concluded that the facts surrounding the application and "in particular the intoxication of the applicant," gave it reason to deny the application. The Board did not elaborate further. The representatives of the Board in attendance at the Committee agreed that the order of the Board dated December 17, 1982 was very brief, but believed that it contained sufficient detail to indicate the Board's reasons for decisions.

Following his investigation of this complaint, the Ombudsman concluded that the decision of the Criminal Injuries Compensation Board denying compensation was wrong and unreasonable. The Ombudsman recommended:

1. That the Criminal Injuries Compensation Board award appropriate compensation to the complainant for loss of income and pain and suffering as a result of the injuries sustained by him.
2. That the Board establish guidelines to assist members in applying section 17(1).
3. That the Board provide full written reasons to applicants for all decisions made under the Compensation for Victims of Crime Act.

In their presentation before the Committee, representatives of the Ombudsman's Office drew the Committee's attention to a decision of the High Court of Justice for Ontario interpreting section 17(1) of the Compensation for Victims of Crime Act. In this case, Dalton v. Criminal Injuries Compensation Board (1982) 36 O.R. (2d) 394, the court ruled that the Board erred in applying section 17(1) to deny compensation to a severely injured victim whose own behaviour was but one of several causative elements.

The facts of the case were that Patsy Dalton, a 37-year-old woman, went to a hotel bar on Friday night to meet two women friends. After the friends left, she was joined by two men she had seen at the hotel on a previous occasion. At closing time, the men suggested that they get some beer, and take it to her husband who had remained at home. Mrs. Dalton agreed and got into a van with the two men. One of the men made sexual advances and when she refused to comply, pushed her out of the moving van onto Highway 401. She was found unconscious and was taken to hospital. Her injuries were a ruptured spleen (later removed), a concussion, multiple fractures of both feet and ankles, internal injuries and lacerations. The two men were not found.

In considering her claim for compensation, the Criminal Injuries Compensation Board relied on section 17(1) of the Act to deny compensation. The Board said that in view of the fact that both she and the men had been drinking it was imprudent of her to have gotten into the van. She was, in the Board's words, "the author of her own misfortune."

The Divisional Court disagreed. It ruled that the Board erred in law by failing to consider the severity of the injuries suffered by Mrs. Dalton in determining whether it would exercise its discretion to deny the application, or merely to reduce the award. The court said that while certain contributing behaviour might be sufficient reason to deny an award where injuries are slight, this is not the case where injuries are severe. The severity of the injury is a "relevant circumstance" which the Board must consider in applying section 17(1).

Further, the court said that the Board failed to properly consider the role of the two men in contributing to her injury. In the court's view, while her behaviour may have been "a cause" of her injuries, it was actually the two men who were the "major authors" of her misfortune. The court agreed that by going with the men she incurred a risk, but she could not have expected to be pushed out of a moving van. Her behaviour may have contributed to her injury, but it was not its exclusive cause. To hold otherwise was legal error.

The Ombudsman notes that though this decision of the Court was handed down before the Board heard the case of Mr. B, the Board did not appear to apply the ruling in reaching its decision. The Ombudsman points to the severity of

the injuries suffered by Mr. B, the unprovoked nature of the attack and the unforeseen nature of the risk as relevant circumstances which the Board failed to consider. The Ombudsman further points out that the consideration which the Board did take into account – namely the intoxication of the applicant – was entirely irrelevant in the circumstances.

After hearing from both the Criminal Injuries Compensation Board and the Ombudsman's Office and considering the case the Committee concluded that the Board erred in applying section 17(1) so as to completely deny the applicant compensation for his injuries. In reaching this conclusion, the Committee relied on the Dalton case, previously discussed, and on the fact that the one factor cited by the Board as a consideration, namely the applicant's intoxication, had little or nothing to do with the attack upon him nor the injuries he sustained.

The Committee therefore voted to support recommendation 1 of the Ombudsman and recommended:

That the Criminal Injuries Compensation Board award appropriate compensation to the complainant for loss of income and pain and suffering as a result of the injuries sustained by him. (Recommendation 7)

In connection with his second and third recommendations, the Ombudsman was highly critical of what he perceived as the Board's bias in dealing with applicants who had been drinking or who had engaged in what might be considered "immoral sexual conduct." The Ombudsman believes that the decisions of the Criminal Injuries Compensation Board between 1982 and the present show inconsistent treatment with respect to these factors. The Ombudsman concluded that the development of written policy and practice guidelines for the application of section 17(1) would benefit Board members and reduce inconsistency in the decisions. The Ombudsman also felt that the Board's reasons for decisions should be more fully stated in its orders and that the Board should report its decisions in a more comprehensive manner than currently employed. At present, the only published source of Board decisions is the summaries of selected decisions published in the Board's annual reports.

The Committee is concerned by the Ombudsman's findings, however, it believes that it would be premature to formally recommend that the Criminal Injuries Compensation Board develop written guidelines for the application of its Act. This case and the one following are the first occasions on which the Board has been called to appear before this Committee. The Committee is not convinced therefore, that there is reason to believe a systemic problem exists in the way the Board presently exercises the discretion it has been given under the Act.

The Committee does believe, however, that the Board's reasons for decision in this case bear comment and a formal recommendation. The Chair of the Criminal Injuries Compensation Board, stated that the Board has recently been making efforts to improve the quality of its written reasons for decisions. The Committee encourages this effort on the part of the Board as it considers that the reasons given in this case were well below acceptable standards. The Committee therefore recommends:

That the Criminal Injuries Compensation Board provide full written reasons to applicants for all decisions made under the Compensation for Victims of Crime Act. (Recommendation 8)

During the Committee's consideration of the case, the Board stated that the major obstacle to complying with the Ombudsman's first recommendation and now the Committee's recommendation is the inability of the Board to reconsider a decision where it has made no award of compensation. The Board referred the Committee to section 25(1) of the Compensation for Victims of Crime Act which states:

s.25(1) The Board may at any time on its own initiative or on the application of the victim . . . , vary an order for payment of compensation in such manner as the Board thinks fit, whether as to terms of the order or by increasing or decreasing the amount ordered to be paid, or otherwise.

In the Board's view, this section does not allow it to reopen a matter and make an order awarding compensation where no order of compensation was made in the first instance. The Board says that as there is no other authority in the Act which can be employed to accomplish the Ombudsman's and now Committee's recommendation, the Board is legally unable to act to implement the recommendation.

The Committee has considered this problem. It is one which has arisen in other cases as well. The amendments to the Ombudsman Act discussed earlier in this Report would, if approved, prevent such a situation from arising in the future by giving authority under the Ombudsman Act for a governmental organization to reopen a matter concerning which the Ombudsman has made a recommendation.

The Committee also suggests that an amendment be made to the Compensation for Victims of Crime Act, by deleting the words "for payment of compensation" in section 25(1). The Committee believes that the statute as presently written unnecessarily hampers the Board's ability to reexamine cases where no award of compensation has been made. The Ombudsman Act amendments are one means of solving this problem, but the Committee believes that an individual should not be forced to go to the Ombudsman in order to have the matter reopened. The Committee therefore recommends:

That the Compensation for Victims of Crime Act be amended by deleting the words "for payment of compensation" from section 25(1). (Recommendation 9)

In the meantime, however, the Committee proposes that the present case be dealt with using the appeal process presently existing in the Act. Committee counsel has investigated this matter and has been advised by the Registrar of the Divisional Court in Ontario that applications made on consent to set aside a decision of an administrative tribunal are not uncommon. The Committee therefore recommends:

That the Criminal Injuries Compensation Board consent to an order of the Divisional Court extending the time for filing an appeal under the Compensation for Victims of Crime Act;

that the Board further consent to an order of the court setting aside its order of December 1, 1982 denying compensation to the complainant in this case and ordering that a new hearing be conducted;

**and that the Board bear the legal costs of this appeal along with the reasonable travel and legal expenses of the complainant in attending the new hearing.
(Recommendation 10)**

In the interests of justice, the Committee wishes to encourage the Board to proceed with this matter as quickly as possible. The Committee also invites the Ombudsman to consider providing legal assistance to the complainant unless and until he can instruct his own counsel in the matter.

(b) Ms. D

In this case the Criminal Injuries Compensation Board denied compensation to a 28-year-old woman assaulted by her husband. The assault occurred in July 1977 at a time when the couple were separated. There was a history of such assaults associated with alcohol abuse over the course of the couple's 10-year marriage. Numerous convictions and peace bonds had been entered against the husband. The couple had three children.

The complainant lived in a small community in Ontario. She encountered her husband one evening at a party and later returned with him to the friend's home where she and her children were staying. A party of sorts continued there until morning.

The complainant, who says she stopped drinking after leaving the first party, drove to the store in the morning, taking a friend. Her husband followed in his car with their three children. His driving was erratic and he apparently drove the car into the ditch on at least one occasion. At the store his car stalled and the complainant put him and their children in the back seat of her car.

During the return trip the husband reached forward and tried to remove the keys from the ignition. In the ensuing struggle he grabbed the complainant by the throat, choking her. The complainant was taken stunned and gasping to a hospital where she was diagnosed as having a fracture of the hyoid bone in her neck. A fracture of the hyoid bone is considered very serious as it normally causes rapid swelling completely blocking the air passage. It is a common accompaniment of judicial hanging.

Several years later, the complainant continues to suffer from headaches, neck stiffness and a propensity to hyperventilate, preventing her from seeking employment. The complainant's husband pleaded guilty to a charge of assault causing bodily harm and was placed on probation for two years.

In its decision on the complainant's application for compensation, November 24, 1982, the Criminal Injuries Compensation Board applied section 17(1) of the Act, denying compensation. In its Order, dated November 24, 1982, the Board stated:

Having considered all the circumstances in this case, including the past history of continuing violence, it is the opinion of the Board that the applicant knew very well the possible – indeed likely – consequences of associating with her husband while they were both under the influence of alcohol....

The Board heard evidence from the investigating officer stating his opinion that he was not surprised to learn that after a night of drinking there had been violence between the couple. The husband had been under a peace bond at his wife's request at the time of the assault.

After conducting an investigation of this matter the Ombudsman concluded: 1) that the decision of the Criminal Injuries Compensation Board not to award Ms. D compensation for her injuries suffered as a result of the unprovoked attack was wrong and unreasonable; and 2) that the Board, in applying section 17(1) of the Compensation for Victims of Crime Act, is acting in accordance with a practice which is unreasonable as the Board has no policies or directives to identify the factors to be considered in assessing such applications. The Ombudsman therefore recommended:

1. That the Criminal Injuries Compensation Board award appropriate compensation to Ms. D for loss of income and pain and suffering as a result of the injuries sustained, as well as additional costs, including return bus fare to the hearing in Toronto, as well as reasonable babysitting costs to allow her to attend the hearing in Toronto.
2. That the Board establish guidelines to assist Board members in applying section 17(1).
3. That the Board establish guidelines to assist Board members in dealing with applications by battered spouses to enable Board members to become sensitized to the issues involved.
4. That the Board provide full written reasons to applicants for all decisions made under the Compensation for Victims of Crime Act.

At the Committee's hearing, representatives of both the Ombudsman's Office and the Criminal Injuries Compensation Board made presentations concerning the Board's decision. The Ombudsman again drew the Committee's attention to the case of Dalton v. Criminal Injuries Compensation Board (1982) 36 O.R. (2d) 394, discussed in connection with the previous case, which he concluded the Board had failed to follow.

The Committee again agreed with the Ombudsman. The Committee concluded that the complainant adopted a reasonable course of action in all the circumstances. The complainant had been in the company of her husband for a number of hours apparently without incident, even though he had been drinking. The Committee concludes that uppermost in her mind in placing both her husband and children in the back of her car was the safety of her children. The Committee cannot imagine that the complainant could foresee being seriously injured while driving in her car with her husband and children in the back seat and a female friend in the front seat down a street in broad daylight. The Committee accepts the Board's contention that she knew there was some risk in associating with her husband given his propensity to violence, but the Committee does not accept that her appreciation of that risk encompassed the harm that actually occurred. In the Committee's view the Dalton decision says that the Board cannot deny compensation where the severity of the injury suffered by the victim outweighs the risk which she reasonably believed she was undertaking. The Committee concludes that the Board erred in its application of section 17(1). The Committee therefore supports the first recommendation of the Ombudsman and recommends:

That the Criminal Injuries Compensation Board award appropriate compensation to Ms. D for loss of income and pain and suffering as a result of the injuries sustained by her, as well as additional costs including return transportation fare to a hearing in Toronto (if necessary) and reasonable babysitting expenses.
(Recommendation 11)

The Committee also voted to support recommendation 4 of the Ombudsman. The Committee considers that the decision given by the board in this case was grossly inadequate. The Committee believes that full written decisions are essential to the Board's process. The Committee therefore recommends:

That the Board provide full written reasons to applicants for all decisions made under the Compensation for Victims of Crime Act. (Recommendation 12)

The Committee appreciates that the Board has made improvements in the quality of its decision writing in recent years. It is hoped that in following the recommendation of the Committee, the Board need do no more than pursue its present course.

In regards to the Ombudsman's recommendations 2 and 3, the Committee, for reasons cited in connection with the case of Mr. B, did not chose to formally act upon them at this time.

Finally, in order to implement its recommendation that the Board award appropriate compensation to the complainant the Committee proposes that the same means be employed to overcome the Board's inability to reopen the matter on its own initiative as was recommended in the case of Mr. B. The Committee therefore recommends:

That the Criminal Injuries Compensation Board consent to an order of the Divisional Court extending the time for filing an appeal under the Compensation for Victims of Crime Act;

that the Board further consent to an order of the court setting aside its order of November 24, 1982 denying compensation to the complainant in this case and ordering that a new hearing be conducted;

**and that the Board bear the legal costs of this appeal along with the reasonable travel and legal expenses of the complainant in attending the new hearing.
(Recommendation 13)**

In the interests of justice, the Committee wishes to encourage the Board to proceed with this matter as quickly as possible. The Committee also invites the Ombudsman to consider providing legal assistance to the complainant unless and until she can instruct her own counsel in the matter.

ii) Ministry of Natural Resources

This case arose out of an agreement in 1985 between the Ministry and a group of commercial fishermen who were members of an Indian band. The Band and Ministry agreed that there would be a fisheries manager for the Band who would submit the monthly fishing reports required by the Ministry on behalf of all the Band's commercial fishermen. The fishing reports for May were submitted on time but reports for the remaining months were not filed.

In telephone conversations with the band Chief in August and September, the Ministry advised the Chief that the returns for June, July and August were overdue. In October, the Band's fisheries manager went to the Ministry's Kenora office to file the September report. This report was incomplete, however, and was withdrawn. The manager first learned of the missing June, July and August reports at that time. Between May and October there were three different fisheries managers employed by the Band.

At the beginning of November summonses were delivered to the individual licencees charging them with failing to file reports. Three Band members were subsequently convicted and fined \$25 each.

Following his investigation of this case the Ombudsman concluded: 1) that the Ministry unreasonably omitted to confirm in writing the terms of the agreement arrived at with the Band; 2) that it unreasonably omitted to document its attempts to collect the delinquent fishing reports and to advise each of the licencees of the consequences of non-compliance; and 3) that its decision to proceed with laying charges was unreasonable. The Ombudsman therefore recommended:

1. The Ministry should employ a consultative procedure in the future when dealing with perceived contraventions of section 8 of Regulation 414 under the Game and Fish Act by directly informing relevant parties, including each licensee, of delinquent reports and confirming all contact in writing.
2. The Ministry should reimburse the fishermen who were charged and convicted for the costs of their legal expenses, and those fishermen who were convicted should also be reimbursed the amount of their fines, once they have been paid.

After reviewing the documents presented in the case and hearing from representatives of the Ombudsman's Office and the Ministry of Natural Resources, the Committee by motion voted to support recommendation 1 of the Ombudsman, with an amendment restricting the application of the recommendation to the fishermen involved in this particular case. The Committee therefore recommends:

That the Ministry of Natural Resources employ a consultative procedure in future when dealing with contraventions of section 8 of Regulation 414 under the Game and Fish Act by directly informing the individual Band licencees in question and confirming all contact in writing. (Recommendation 14)

The Committee voted not to accept recommendation 2 of the Ombudsman. While the Committee has some sympathy for the Ombudsman's conclusions respecting the laying of charges in this case, the Committee considers that it would not be proper for it to make a recommendation which is in effect attempting to undo aspects of a court's decision. The Committee finds that in making this recommendation, the Ombudsman intruded too far into the jurisdiction of the court in this province.

The Committee is pleased to report that it received a letter dated March 23, 1988 from the Minister of Natural Resources stating that the Ministry accepts the Committee's recommendation and is taking steps to implement its provisions.

PART VI COMMITTEE RULES OF PROCEDURE

During the Committee's hearings of the recommendation denied cases reported in Parts IV and V of this Report, two procedural matters arose concerning which the Committee feels called upon to make additional comments and recommendations. The first of these is the presentation of material or information at the time of the hearing that has not previously been made available to the Ombudsman. The second is the issue of complainant confidentiality.

The Committee has addressed the problem of new material in the past and made it known to particular governmental agencies that it will not accept information being laid before the Committee where such information could with a reasonable amount of due diligence have been provided to the Ombudsman in advance. The Committee believes, however, that this ad hoc approach to the problem has failed. The Committee has therefore formulated a general rule that it will not in the future permit new information to be laid before the Committee where such information will prejudice the position of the Ombudsman or call into question the integrity of the Ombudsman process in Ontario. Underlying this rule is the Committee's belief that for the Ombudsman to properly fulfill his mandate, the Ombudsman must be made aware, as early as possible, of all the reasons why a governmental organization acted the way it did. This requires full disclosure on the part of the governmental organization and cooperation in compiling a complete record to set before the Committee.

The Committee therefore recommends:

That the Ombudsman, by notice contained in his report under section 19(3), inform governmental organizations that in the event of a Committee hearing of the matter, only documents forming part of the formal record will be permitted to be discussed unless the Committee otherwise orders. The formal record shall be composed of those documents exchanged up to and including the written response of the governmental organization to the section 22(3) report of the Ombudsman, and such other documents exchanged within a reasonable period prior to Committee's hearing of the matter. (Recommendation 15)

The issue of complainant confidentiality is a less recurrent problem, but one which is no less serious. Prior to the Committee's hearing of one particular case, an especially egregious and regrettable breach of confidentiality occurred. While the breach was remedied insofar as the Committee's process was concerned, the Committee would like to avoid a recurrence of this problem. The Committee therefore recommends:

That the Ombudsman include in his report under section 22(3), or in a separate information sheet, a description of the Committee's rules respecting confidentiality.
(Recommendation 16)

The Committee would also like to remind the Ombudsman of the need to be scrupulous in ensuring that anonymity is preserved in the material he provides to the Committee.

While the Committee hopes that the above recommendations will solve its most pressing procedural problems, it is aware that an examination of the issue of its procedures as they generally exist, is warranted. Accordingly, the Committee will be undertaking the development of a comprehensive guide to its procedures over the next year. The Committee intends to provide a copy of this guide to governmental organizations appearing before the Committee in the future in an attempt to eliminate the types of difficulties which the Committee experienced this year.

PART VII COMMUNICATIONS RECEIVED FROM THE PUBLIC

The Subcommittee on Communications from the Public has met three times since the Fifteenth Report of the Committee. The Subcommittee receives complaints and comments from members of the public concerning the manner in which the Ombudsman has conducted his investigation of particular cases.

The three matters outstanding from the Committee's Fifteenth Report have been dealt with and were the subject of reports to the full Committee.

The Subcommittee has received correspondence from a further five members of the public. One matter concerns information only, a second has been dealt with by the Subcommittee and reported to the full Committee. The remaining three are awaiting further documentation before being addressed by the Subcommittee.

**PART VIII ESTIMATES OF THE OMBUDSMAN
FOR THE FISCAL YEAR APRIL 1, 1987 TO MARCH 31, 1988**

The Ombudsman proposed no increase in his budgetary allocation for the fiscal year April 1, 1987 to March 31, 1988, over the total allocated in 1986-87. In 1986-87, the Ombudsman originally estimated a budget of \$6,446,700.00 which was approved by the Committee. Supplementary estimates of \$100,000 necessitated largely by an unforeseen demand for employee benefits, were also approved. The estimates of the Ombudsman for 1987-88 are equal to the total of these figures or \$6,546,700.00.

The Committee continues to have high regard for the financial management of the Ombudsman's Office. New programmes continue to be developed, but the Ombudsman has shown a remarkable ability to provide for these programmes through reallocating existing resources.

The Committee ordered that the Chairman report the estimates of the Ombudsman for the fiscal year ending March 31, 1988, to the House, without comment.

PART IX EXPANSION OF THE OMBUDSMAN'S JURISDICTION

In its Fifteenth Report, the Committee stated that during 1986 it had received from the Ombudsman a "Position Paper on Expanding the Jurisdiction of the Ombudsman." The Committee expressed a hope that it would shortly be able to review the paper in detail and determine how best to deal with the proposals made by the Ombudsman.

The Committee undertook that review at its meeting on February 29, 1988. After considerable discussion, the Committee by motion decided to conduct public hearings into the operation of the Office of the Ombudsman with a view to expanding the Ombudsman's jurisdiction into the three areas recommended by the Ombudsman in his position paper, namely, children's aid societies, public hospitals and the Ontario New Home Warranty Programme.

The Committee has requested funds to enable it to conduct public hearings in Thunder Bay, Timmins, London, Toronto and Ottawa. It hopes to hear from the agencies and organizations that would be affected by the proposed

expansion of the Ombudsman's jurisdiction, from the client groups of those organizations, and from any other parties who may be interested. The Committee has also requested permission to travel to Manitoba and New Brunswick to meet with the ombudsmen, legislators and others in those provinces. The jurisdiction of the Manitoba and New Brunswick ombudsmen most closely resembles that which the Ontario Ombudsman is seeking.

The Committee looks forward to conducting its hearings during the summer and reporting on this matter to the Legislature in the fall of 1988.

PART X VISITS OF THE WEST GERMAN AND BRITISH DELEGATIONS

On August 27, 1987 a delegation representing the Petitions Committee of the Landtag of Baden-Wuerttemberg in West Germany visited Queen's Park near the end of a cross-Canada tour. The Petitions Committee serves a role similar to that of the Ombudsman in Ontario. The Legislative Assembly hosted a luncheon and staff of the Standing Committee on the Ombudsman met in an information session with the delegation.

More recently, on April 27, 1988, a subcommittee of the British House of Commons Select Committee on the Parliamentary Commissioner for Administration was in Toronto also in the midst of a Canadian tour. The Select Committee has a role similar to the role of the Standing Committee on the Ombudsman. The ombudsman function in Britain is performed by the Parliamentary Commissioner for Administration. Members and staff of the Standing Committee met with the British delegation to exchange views and information. A luncheon was hosted jointly by the Standing Committee on the Ombudsman, the Standing Committee on the Legislative Assembly and the Office of the Ombudsman.

PART XI SUMMARY OF RECOMMENDATIONS

1. That the Committee delay action on this case until amendments to the Public Service Superannuation Act are introduced in the House. (Page 5)
2. That priority be given to introducing and approving amendments to the Ombudsman Act in the current or next session of the Legislature. (Page 8)
3. That the Workers' Compensation Appeals Board revoke its decision of October 28, 1985 and award appropriate benefits to the complainant for bilateral hearing loss and tinnitus. (Page 13)
4. That the Appeal Board decision of June 18, 1986 be set aside and that the Workers' Compensation Board award benefits to the complainant for his hip disability, forthwith. (Page 14)
5. That [the complainant] be granted entitlement to benefits on the basis of disablement arising out of and in the course of his employment for the period August 26, 1980 to September 1, 1981. (Page 14)
6. That the Farm Products Marketing Commission pay the first 60-day period on each of the claims arising from the financial collapse of the processor. (Page 15)
7. That the Criminal Injuries Compensation Board award appropriate compensation to the complainant for loss of income and pain and suffering as a result of the injuries sustained by him. (Page 19)
8. That the Criminal Injuries Compensation Board provide full written reasons to applicants for all decisions made under the Compensation for Victims of Crime Act. (Page 20)
9. That the Compensation for Victims of Crime Act be amended by deleting the words "for payment of compensation" from section 25(1). (Page 21)
10. That the Criminal Injuries Compensation Board consent to an order of the Divisional Court extending the time for filing an appeal under the Compensation for Victims of Crime Act;

that the Board further consent to an order of the court setting aside its order of December 1, 1982 denying compensation to the complainant in this case and ordering that a new hearing be conducted;

and that the Board bear the legal costs of this appeal along with the reasonable travel and legal expenses of the complainant in attending the new hearing. (Page 21)
11. That the Criminal Injuries Compensation Board award appropriate compensation to Ms. D for loss of income and pain and suffering as a result of the injuries sustained by her, as well as additional costs including return transportation fare to a hearing in Toronto (if necessary) and reasonable babysitting expenses. (Page 24)

12. That the Board provide full written reasons to applicants for all decisions made under the Compensation for Victims of Crime Act. (Page 25)
13. That the Criminal Injuries Compensation Board consent to an order of the Divisional Court extending the time for filing an appeal under the Compensation for Victims of Crime Act;

that the Board further consent to an order of the court setting aside its order of November 24, 1982 denying compensation to the complainant in this case and ordering that a new hearing be conducted;

and that the Board bear the legal costs of this appeal along with the reasonable travel and legal expenses of the complainant in attending the new hearing. (Page 25)

14. That the Ministry of Natural Resources employ a consultative procedure in future when dealing with contraventions of section 8 of Regulation 414 under the Game and Fish Act by directly informing the individual Band licencees in question and confirming all contact in writing. (Page 27)
15. That the Ombudsman, by notice contained in his report under section 19(3), inform governmental organizations that in the event of a Committee hearing of the matter, only documents forming part of the formal record will be permitted to be discussed unless the Committee otherwise orders. The formal record shall be composed of those documents exchanged up to and including the written response of the governmental organization to the section 22(3) report of the Ombudsman, and such other documents exchanged within a reasonable period prior to Committee's hearing of the matter. (Page 28)
16. That the Ombudsman include in his report under section 22(3), or in a separate information sheet, a description of the Committee's rules respecting confidentiality. (Page 29)



Standing Committee on the Ombudsman

Seventeenth Report 1989

1st Session, 34th Parliament
37 Elizabeth II



LEGISLATIVE ASSEMBLY
ASSEMBLÉE LÉGISLATIVE

The Honourable Hugh Edighoffer, M.P.P.
Speaker of the Legislative Assembly

Sir,

Your Standing Committee on the Ombudsman has the honour to present its 17th Report and commends it to the House.

A handwritten signature in cursive script, appearing to read "Cindy Nicholas", with a large circular flourish at the end.

Cindy Nicholas, M.P.P.
Chairman

Queen's Park
January, 1989



MEMBERSHIP OF THE STANDING COMMITTEE ON
THE OMBUDSMAN

CINDY NICHOLAS
CHAIRMAN

MAURICE BOSSY
VICE-CHAIRMAN

DOUG CARROTHERS

TONY LUPUSELLA

BRIAN CHARLTON

KEITH MacDONALD

DON COUSENS

ED PHILIP

JAMES HENDERSON

JIM POLLOCK

LINDA LEBOURDAIS

Franco Carrozza
Clerk of the Committee

JOHN P. BELL
Counsel to the Committee

JENNIFER WILSON
Research Officer

17TH REPORT ON THE STANDING COMMITTEE ON THE OMBUDSMAN

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PART I: INTRODUCTION

This Report of the Standing Committee on the Ombudsman reviews the Fifteenth Annual Report of the Ombudsman for the fiscal year 1987-88 which was tabled in the Legislature on June 28, 1988 and a Special Report which was tabled in July 1988. This Special Report concerns five reports issued by the Ombudsman pursuant to Section 22(3) of the Ombudsman Act in which the Ombudsman's recommendations were denied by the governmental organizations.

Out of the five "recommendation denied" cases considered by the Committee, four involved the Ministry of Health and one involved the Ministry of Education. The Committee fully supported the Ombudsman's recommendations in three of the cases and partially supported his recommendations in the remaining two cases.

In addition to reviewing the Ombudsman's Annual and Special Reports, matters outstanding from previous Committee and Ombudsman reports and submissions presented by various ministers and witnesses with respect to the Ombudsman's Report on Expanded Jurisdiction will be considered in this report. Although, the Committee spent a considerable amount of time hearing submissions on the issue of expanded jurisdiction, the hearings are only referred to briefly in this report because the matter is still under consideration. Upon conclusion of the Committee's deliberations, a special report on expanded jurisdiction will be issued.

PART II: RETIREMENT OF OMBUDSMAN HILL

Dr. Hill made his farewell address in his Fifteenth Annual Report. He will be retiring from office in March 1989. Members of the Committee would like to acknowledge the outstanding work Dr. Hill has done during his term in office. Although his accomplishments are numerous and are all noteworthy, the Committee would in particular like to recognize his achievements in the area of accessibility.

One of Dr. Hill's priorities upon taking office in March 1984 was to undertake steps to fulfill his commitment to Article 21 of the United Nations Universal Declaration of Human Rights which guarantees the fundamental right of the citizen to reasonable access to the services of the government. Through his public education and community outreach programs, Dr. Hill has been extremely successful in increasing the accessibility of his office to all citizens of Ontario. His efforts have contributed towards recognizing and reflecting the new Ontario - multilingual, multiracial and multicultural.

The Committee would like to express its gratitude to Dr. Hill for his work during the last five years and to wish him all the best in the future.

PART III: SIXTEENTH REPORT OF THE STANDING COMMITTEE ON THE OMBUDSMAN

a) Debate by Legislature

The Sixteenth Report of the Standing Committee on the Ombudsman was tabled in the Legislature on June 16, 1988. There has been no debate of the Report.

b) Responses from Governmental Organizations to Recommendations Contained in the Report

Although several of the recommendations adopted by the Committee in its 16th Report have not been fully implemented, all of the ministries involved have responded positively to these recommendations. Members of the Committee appreciate the ministries' efforts and expects that these matters will be successfully concluded in the near future.

(i) Ministry of Government Services-Public Service Superannuation Board (Recommendation I)

In its Fifteenth Report the Committee recommended:

That the Ministry of Government Services and/or the Public Service Superannuation Board pay to the complainant the sum of \$2,239.91 plus interest, at 6.5% calculated annually from November 30, 1967 to the date payment is made, as compensation for lost pension benefits occasioned by the failure of the Director of the Pension Funds Branch to properly advise the complainant of the consequences of transferring his pension credits from the PSSF to the OMERS.

Representatives of the Public Service Superannuation Board have been unable to implement the Committee's recommendation because they have no authority in their statute to authorize such a payment. As a result the Committee adopted a further recommendation in its Sixteenth Report:

That the Committee delay action on this case until amendments to the Public Service Superannuation Act are introduced in the House.

After further deliberations on the matter, the Committee has decided to take all possible measures to expedite a settlement of this dispute. Therefore the Committee recommends:

That the Clerk of the Committee notify the Minister of the Ministry of Management Board to place in the Estimates for 1988-89, the Ministry of Government Services, Public Service Superannuation Board, the sum of \$2,239.91 plus interest at 6.5% calculated annually from November 30, 1967 to the date payment is made to Mr. "O" (Recommendation 1).

(ii) Criminal Injuries Compensation Board

(a) Mr. B.

In its 16th Report, the Committee recommended:

That the Criminal Injuries Compensation Board award appropriate compensation to the complainant for loss of income and pain and suffering as a result of the injuries sustained by him;

That the Criminal Injuries Compensation board provide full written reasons to applicants for all decisions made under the Compensation for Victims of Crime Act;

That the Compensation for Victims of Crime Act be amended by deleting the words "for payment of compensation" from section 25(1);

That the Criminal Injuries Compensation Board consent to an order of the Divisional Court extending the time for filing an appeal under the Compensation for Victims of Crime Act;

That the Board further consent to an order of the court setting aside its order of December 1, 1982 denying compensation to the complainant in this case and ordering that a new hearing be conducted; and,

That the Board bear the legal costs of this appeal along with the reasonable travel and legal expenses of the complainant in attending the new hearing.

(b) Ms. D.

The Committee made three recommendations to the Board in its 16th Report:

That the Criminal Injuries compensation Board award appropriate compensation to Ms. D. for loss of income and pain and suffering as a result of the injuries sustained by her, as well as additional costs including return transportation fare to a hearing in Toronto (if necessary) and reasonable babysitting expenses;

That the Board provide full written reasons to applicants for all decisions made under the Compensation for Victims of Crime Act;

That the Criminal Injuries Compensation Board consent to an order of the Divisional Court extending the time for filing an appeal under the Compensation for Victims of Crime Act;

That the Board further consent to an order of the court setting aside its order of November 24, 1982 denying compensation to the complainant in this case and ordering that a new hearing be conducted; and

That the Board bear the legal costs of this appeal along with the reasonable travel and legal expenses of the complainant in attending the new hearing.

The Committee has been informed that in both the cases of Mr. B. and Ms. D., the complainants' solicitors are in the process of making applications to the court for judicial review of the Board's decisions. The Committee expects that both matters will be reheard by the Board in the near future.

(iii) Ministry of Labour - Workers' Compensation Board
(Recommendations 2, 3, 4, 5)

The Committee made four recommendations to the Workers' Compensation Appeals Board respecting four "recommendations denied" cases contained in the Ombudsman's Fourteenth Report. All of these recommendations have been implemented by the Board to the satisfaction of the Ombudsman.

(iv) Ministry of Agriculture and Food (Recommendation 6)

In its Sixteenth Report, the Committee recommended:

That the Farm Products Marketing Commission pay the first 60-day period on each of the claims arising from the financial collapse of the processor.

The Committee is pleased to report that the recommendation has been fully implemented by the Commission.

PART IV: FIFTEENTH ANNUAL REPORT OF THE OMBUDSMAN
(April 1, 1987 to March 31, 1988)

(a) Matters Outstanding from Previous Ombudsman and Committee Reports

(i) Ministry of Housing
(Ontario Housing Corporation)

This matter (Complaint No. 18 in Ombudsman Report No. 7 considered in Standing Committee Report No. 8) concerned a refusal by the Ontario Housing Corporation to pay the claimant a sum of money alleged due under The Public Works Creditors Payment Act. The Ombudsman, in his Seventh Report tabled in 1980, made four recommendations to the Ontario Housing Corporation, which in essence acknowledged a sum of money due to the claimant under The Public Works Creditors Payment Act. This permitted the Ontario Housing Corporation and the claimant to look to the surety in question for payment.

At that time, the Ontario Housing Corporation decided to accept the Ombudsman's recommendations and so advised the Committee during its hearings. Although the matter was considered resolved, there was a delay in the implementation of the recommendations. The Committee was recently advised that the Ombudsman's recommendations have finally been implemented by the payment of \$18,196.57 to the complainant.

(ii) Ministry of the Environment

This matter (Complaint No. 10 in Ombudsman Report No. 11 considered in Standing Committee Report No. 12) concerned the issue of the claimant's entitlement to claim and, in the appropriate circumstances, be awarded interest on monies found due and paid to him pursuant to The Public Works Creditors Payment Act. In its Twelfth Report, the Committee recommended:

- That the Minister of the Environment accept in principle that the Crown may, in the appropriate circumstances, pay a claimant interest due pursuant to a term of a contract with a contractor; and
- That the Minister of the Environment consider the merits of the complainant's claim for interest owing on the principal amount in question and formulate a decision whether or not to pay such claim.

The Ministry accepted in principle that it could in fact pay interest in appropriate circumstances but declined to do so in the particular case. In its Thirteenth Report the Committee stated that "in fairness to both the Ministry and the complainant, the matter should be assessed by someone other than the Ministry." It therefore recommended:

That an independent adjudicator be appointed to assess the matter of whether or not interest is owed to the complainant.

In response to this recommendation the process of appointing an adjudicator was begun, but bogged down in a dispute over the terms of reference of the adjudication. In its Fifteenth Report the Committee expressed some concern at the length of time the matter had been pending. The Committee recognized that the adjudication would be the last opportunity for the complainant to state his case and have his rights determined and was concerned that this should be accomplished in a way perceived by the complainant as fair. The Committee therefore recommended:

That the adjudication be styled as a hearing in the ordinary course, with an opportunity given to the parties to call and lead any evidence they consider appropriate;

That the principal amount upon which interest is to be calculated be clearly stated as a sum not to exceed \$27,730.00;

That the rate of interest applied by the adjudication be determined in accordance with the Courts of Justice Act; and

That the costs of adjudication be paid by the Ministry, except for the complainant's legal costs.

In their most recent attendance before the Committee, representatives of the Ministry of the Environment assured members that the matter is now being duly addressed. The Committee expects that the Ombudsman's recommendations will be fully implemented before the release of the next Annual Report.

(iii) Amendments to the Ombudsman Act

The Standing Committee made the following recommendations with respect to the proposed amendments to the Ombudsman Act in its Thirteenth, Fifteenth and Sixteenth Reports:

That the Attorney General table immediately in the Legislature a bill amending the Ombudsman Act (Thirteenth Report);

That the amendments to the Ombudsman Act be tabled in the legislature without delay and that all parties cooperate in speeding the progress of the amending bill through the House (Fifteenth Report); and

That the Attorney General give priority to introducing and approving amendments to the Ombudsman Act in the current or next session of the legislature (Sixteenth Report).

On August 8, 1988 the amendments were still not forthcoming and as a result the Committee by motion agreed to communicate with the Attorney General's office to determine the status of the amendments. It was further agreed that if no reply was forthcoming or if the reply was deemed unsatisfactory, the Attorney General would be requested to attend before the Committee to discuss the delay.

The Attorney General wrote to the Committee in August 1988 and indicated that his Ministry has completed its preliminary consultations and that the process of obtaining Cabinet approval will be commenced shortly. He anticipates having legislation ready for introduction before or just after Christmas.

(b) Recommendations Denied by Governmental Organizations as Reported in the 1987-88 Annual Report of the Ombudsman

In his Annual Report, the Ombudsman identified three separate cases in which the Workers' Compensation Board refused or failed to implement the recommendations made by the Ombudsman in reports submitted pursuant to section 22(3) of the Ombudsman Act. Prior to its hearings, the Committee was advised that the recommendations in all three reports were accepted for implementation by the Workers' Compensation Board.

PART V: SPECIAL REPORT OF THE OMBUDSMAN

(a) Recommendations Denied by Governmental Organizations as Reported in a Special Report of the Ombudsman

Where there are cases involving special circumstances or some urgency, it has been the practice of the Ombudsman to submit a special report to the legislature so that the matters may be brought before the Standing Committee for consideration at the earliest possible date.

The Ombudsman has tabled a Special Report containing five "recommendation denied" cases. Four of these cases, Mr. K., Mr. and Mrs. L., Ms. M. and Ms. J. involve the Ministry of Health; the fifth case, Mrs. H., involves the Ministry of Education.

(i-iii) Ministry of Health

Mr. K., Mr. and Mrs. L., Ms. M.

In each of these three cases, the complaint concerned the Ministry of Health's denial of companion travel grants under the Northern Health Travel Grant Program to those persons travelling with patients over the age of 18.

The Northern Health Travel Grant Program, which is administered by the Ministry of Health, provides grants to patients resident in Northern Ontario for their transportation to a medical specialist or hospital in Ontario or Manitoba. In addition, where the patient is under 18 years of age and is unable to travel alone, the accompanying relative or guardian is entitled to apply for a grant to cover his or her travelling costs.

In the cases of Mr. K., Mr. and Mrs. L. and Ms. M., all of the complainants were denied companion travel grants because they were travelling with patients over the age of 18. In all of the three cases, the medical condition of the patients was such that they were unable to travel alone. Mr. K. was referred to a specialist at McMaster University in Hamilton in 1987 in order to undergo open-heart surgery; Ms. L., who is a legally blind senior citizen, was referred to a specialist in southern Ontario for laser treatment in 1987 in connection with her diabetic retinopathy; and Ms. M. was referred in 1985 to a specialist in southern Ontario for a hip replacement operation. All of the patients were advised by their physicians to have someone accompany them to the hospital.

Following his investigation of the matters, the Ombudsman concluded that since the goal of the program was to offset the costs of medically necessary travel to specialists for persons residing in Northern Ontario, the Ministry of Health's restriction of eligibility for a companion travel grants to those travelling with patients under the age of 18, was in accordance with legislation which is unreasonable and improperly discriminatory. He also concluded that the Ministry's actions appear to have been contrary to law in that they appear to violate section 15 of the Charter of Rights and Freedoms.

He therefore recommended:

That the Ministry amend Ontario Regulation 596/85 in order to remove all age restrictions pertaining to the provision of companion travel grants under the Northern Health Travel Grant Program.

The Ministry of Health declined to implement the recommendation of the Ombudsman stating that the companion travel grant program was established specifically for persons under 18 years of age in order to recognize both special transportation circumstances (the need for supervision) and the matter of consent for treatment. It was designed so as to obviate the need for discretion on the part of the administrators of the program. As a result, any changes allowing for companion travel grants to be awarded on a basis other than age would be problematic both in terms of developing criteria for the exercise of the discretion and determining who would be responsible for exercising the discretion.

After reviewing the documents submitted by the Ministry of Health and the Ombudsman's Office and upon hearing submissions from both parties, the Committee supported the Ombudsman's first conclusion that:

The Ministry's restriction of eligibility for a companion travel grant under the Northern Health Travel Grant Program to those travelling with patients under the age of 18 is in accordance with legislation which is unreasonable and improperly discriminatory.

In reaching their decision, members of the Committee acknowledged the fact that children need to be accompanied to hospitals for purposes of supervision and consent. However, they also felt that there could be legitimate cases in which patients over the age of 18 are unable to travel alone, i.e. age, medical condition, disorientation due either to disease or treatment, or the need for moral support. It was agreed that, in these cases, companions should be entitled to apply for a travel grant under the program.

The Committee accordingly recommends that:

The Ministry of Health amend Ontario Regulation 596/85 in order to remove all age restrictions pertaining to the provision of companion travel grants under the Northern Health Travel Grant Program (Recommendation 2).

It is the Committee's opinion that it is possible to develop flexible guidelines in the Regulations for the exercise of the discretion without introducing a new form of discrimination. Furthermore, it is the Committee's view that when developing these guidelines, the Ministry of Health should consider such criteria as financial need, medical need and consensual need.

(iv) Ministry of Health

Mrs. J.

This case concerns a decision by the Ontario Health Insurance Plan/Ministry of Health denying coverage for the cost of semen for purposes of artificial insemination.

The complainants in this case, Mr. and Mrs. J., are parents of a son who suffers a rare inherited disorder called Zellwegers Syndrome. Although their son has survived for four years, his condition is terminal.

The couple wish to have another child together but have been advised that because they both carry a recessive gene, there is at least a one in four chance that their next child will also be born with Zellwegers Syndrome. Given these statistics, Mr. and Mrs. J. have decided that artificial insemination offers them the best hope for having another child.

The couple were advised that should Mrs. J. undergo artificial insemination, they would be required to bear the cost of the semen samples used in the process. The cost was estimated to be \$250 per cycle with 4-6 cycles recommended for Mrs. J. Given their financial circumstances, Mr. and Mrs. J. requested the Ministry of Health/OHIP to assist them in covering the cost of the donor sperm. They were, however, advised by the local Assessment Office of OHIP that, while the costs associated with the procedure of artificial insemination are covered under the Plan, the cost of sperm is not.

Following his investigation, the Ombudsman concluded that the Ministry of Health's refusal to assist Mr. and Mrs. J. with the cost of donor sperm was in accordance with legislation, which was unreasonable. He therefore recommended that:

- The Ministry of Health/OHIP reconsider including in the Schedule of Benefits the cost of donor sperm as part of the artificial insemination procedure currently covered under the Schedule of Benefits.

The Ministry of Health declined to implement the recommendation of the Ombudsman. Representatives of the Ministry stated, however, that while OHIP should not cover the cost of donor sperm, the Ministry was studying the possibility of funding a donor sperm bank. This would not be undertaken until a test is developed for screening the sperm in order to ensure that it is free from the AIDS virus.

The Standing Committee heard submissions from the Ombudsman's Office with respect to Mr. and Mrs. J.'s case. However, during the Ministry of Health's presentation, it became apparent that new information was being introduced. The position of this Committee with respect to the submission of new information is clear. In the 16th Report of the Standing Committee on the Ombudsman, the Committee formulated the rule that it will not permit the introduction of new information where such information will prejudice the position of the Ombudsman or call into question the integrity of the Ombudsman process in Ontario.

It is this Committee's opinion that in order for the Ombudsman to fulfill his mandate it is essential that he obtain full disclosure from the governmental organization involved before the matter is heard by the Committee. The Ombudsman's Office has implemented this recommendation as a matter of standard procedure. The Ministry of Health was properly notified in this case and was aware of the Committee's rule.

Although members of the Committee felt bound by this rule, they also recognized the implications of rendering a decision in the absence of relevant information given the serious nature and complexity of the issue under consideration. The Committee adjourned the matter for several hours and instructed the Ministry of Health to meet with the Ombudsman's Office to discuss the case.

Upon return, both parties had agreed to the following three-part resolution:

- that the Ministry of Health supply to the Ombudsman's Office all relevant information necessary for the Ombudsman to reconsider his recommendation with respect to the Ministry's general policy on the provision of donor sperm;
- that the Ministry of Health arrange to provide donor sperm to the applicants at no cost as soon as an acceptable test has been developed to ensure that donor sperm is free from the AIDS virus; and
- that, in order to prevent a similar situation from arising in the future, a joint committee be established consisting of senior representatives from the Ministry of Health and the Ombudsman's Office. The Committee's mandate will be to consider those issues coming before the Ombudsman which do not appear to be easily resolvable. It was pointed out that the Ombudsman has established similar joint committees with the Workers' Compensation Board, the Ministry of Correctional Services and the Ministry of Health.

Members of the Standing Committee concurred with the three-part resolution of the parties and agreed to adjourn the matter until October. The Ombudsman was requested to report back to the Committee in the fall with his recommendation regarding the funding of donor sperm.

The Ombudsman has recently advised the Committee that the Ministry of Health is in the process of developing a policy for provision of semen to Ontarians at no cost. It is the Committee's understanding that the Ministry expects to implement this policy in 1989.

Accordingly, the Committee recommends:

That the Ministry of Health arrange to provide donor sperm to Mr. and Mrs. J. at no cost as soon as an acceptable test has been developed to ensure that donor sperm is free from the AIDS virus. (Recommendation 3)

(v) Ministry of Education

Mrs. H.

This case concerns the Ministry of Education's decision denying a survivor allowance under the Teachers' Superannuation Fund.

The complainant, Mrs. H., is the widow of a retired school principal. Although her husband had been paying into the Teachers' Superannuation Fund from 1928 until 1972 in order to provide pension benefits for himself and his spouse, Mrs. H. has been informed that she is not entitled to receive a dependent's allowance.

Under the provisions of the applicable legislation, the former Teachers' Superannuation Act, R.S.O. 1980, c. 494, s. 36(2), a dependent's allowance is not payable to the surviving spouse of a deceased person if they were married after the date of the pensioner's last day of employment in education. Mr. and Mrs. H. were married in 1982, ten years after Mr. H.'s retirement.

The new Teachers' Superannuation Act, 1983, contains a similar provision to the one in the 1980 legislation. However, it also enables a pensioner to elect to provide a survivor allowance to a spouse where marriage takes place after retirement, provided that the pension which would otherwise be payable to the retired teacher is actuarially reduced to allow for the survivor allowance. The 1983 legislation further provides, however, that where a person has retired before September 1, 1984, his or her pension will continue to be governed by the legislation as it existed before this Act was proclaimed in force.

Since Mr. H. retired in 1972, his pension is governed by the provisions of the former Teachers' Superannuation Act. Under that Act, there was no provision to enable a pensioner to elect to provide a survivor allowance to a spouse where marriage takes place after retirement. There was thus no method available by which Mr. H. could ensure that his new wife would receive an allowance if he predeceased her.

Following his investigation, the Ombudsman concluded that Mrs. H. was discriminated against on the basis of the timing of her marriage and that:

- The decision of the Teachers' Superannuation Commission to deny a survivor allowance to Mrs. H. because she was not married to Mr. H. at the time of his retirement, pursuant to section 36(2) of the Teachers' Superannuation Act, R.S.O. 1980, c. 494, appears to be contrary to law, specifically the Charter of Rights and Freedoms, section 15(1). Similarly, section 26(3) of the Teachers' Superannuation Act, 1983, S.O. 1983, c. 84 appears to be contrary to law, specifically the Charter of Rights and Freedoms, section 15(1).

In order to ensure that his objections to the legislation were voiced in the clearest possible terms, the Ombudsman made an additional conclusion:

- That the decision of the Teachers' Superannuation Commission to deny a survivor allowance to Mrs. H. was in accordance with a provision of Teachers' Superannuation Act that is improperly discriminatory.

The Ombudsman recommended that if his first conclusion is accepted:

- That the Attorney General, in conjunction with the Minister of Education, take appropriate steps to amend the Teachers' Superannuation Act, R.S.O. 1980, c. 494 and the Teachers' Superannuation Act, 1983, c. 84 to be in compliance with section 15(1) of the Charter of Rights and Freedoms, effective April 17, 1985; and
- That following these amendments, the Teachers' Superannuation Commission take the necessary steps to issue a dependent's allowance to Mrs. H. in accordance with section 36(1) of the Teachers' Superannuation Act, R.S.O. 1980, c. 494, effective from the first day of her inquiry for same.

If his second conclusion alone was accepted:

- That the Attorney General, in conjunction with the Minister of Education, take appropriate steps to amend the Teachers' Superannuation Act, R.S.O. 1980, c. 494 and the Teachers' Superannuation Act, 1983, c. 84 to remove the provision which he has found to be improperly discriminatory; and
- That the Minister of Education, in conjunction with any other governmental organization he deems necessary, issue an ex gratia payment to Mrs. H. as soon as possible, effective from the first day of the month following the date of her inquiry for same, until the amended provision is in force. Such payment can be made by providing for it through the annual budgetary process, so that no

question will arise as to the authority of the Ministry to make the payments. Also, he recommended that payments be made to any other surviving spouses who have been denied a full dependent's or survivor allowance by the Teachers' Superannuation Commission pursuant to the Teachers' Superannuation Act or the Teachers' Superannuation Act, 1983, payable from the first day of the month following the date of their request for a benefit as a result of his recommendation.

The Ministry of Education agreed in principle that the legislation appears to be unfair to Mrs. H. but stated that it could not make a commitment to amend the legislation until a review was conducted.

After considering the case and hearing submissions from representatives of both the Ombudsman and the Ministry of Education, the Committee concluded that the Ministry of Education should be given time to conduct a review of the issues regarding the extension of this benefit generally to all members of the Teachers' Superannuation Fund adversely affected by the legislation. However, the Committee also decided that Mrs. H. was entitled to survivor benefits and that it would be unreasonable in view of her age and deteriorating health to require her to await the completion of a review before she receives her pension benefits.

Therefore, the Committee recommends that:

The Ministry of Education cause the Teachers' Superannuation Commission to pay Mrs. H. survivor benefits as of August 8, 1985, and that the Ministry of Education, within three months of this motion, on or about November 22, 1988, report to this Committee on the advisability of extending this benefit as a matter of right to spouses of Teachers' Superannuation Fund members adversely affected. (Recommendation 4)

The Committee has recently been advised by the Minister of Education that there is no authority in the Teachers' Superannuation Act which would allow him to implement the Committee's recommendations to pay Mrs. H. survivor benefits. He stated that the matter has been referred to the government pension working group, a body established to review various pension policy issues and benefits options available under the Teachers' Superannuation Act.

After further deliberation, the Committee by motion agreed to make the following addition to its recommendation:

That the Committee direct the working group (as set up by the Minister of Education) to deal with the issue of Mrs. H.'s pension and the general issue of pensions, as soon as possible. (Recommendation 5)

Members of the Committee were recently informed that the working group has not yet been established by the Ministry of Education. In order to expedite the payment of survivor benefits to Mrs. H., the Committee further recommends:

That the Minister of Education, in conjunction with any other governmental organization he deems necessary, issue an ex gratia payment to Mrs. H. as soon as possible, effective from the first day of the month following the date of her inquiry for same, until the amended provision is in force. Such a payment can be made through the annual budgetary process, so that no question will arise as to the authority of the Ministry to make the payments;

and, That the Minister of Education, in conjunction with any other governmental organization he deems necessary, make spousal payments to any other surviving spouses who have been denied a full dependent or survivor allowance by the Teachers' Superannuation Act or the Teachers' Superannuation Act, 1983, payable from the first day of the month following the date of their request for a benefit as a result of this recommendation. (Recommendation 6)

Two members of the Committee, Mr. Bossy and Mr. Lupusella, dissented in the vote on Recommendation 6. While sympathetic to Mrs. H.'s circumstances, they were concerned about the manner in which this recommendation was raised. In their view, as a matter of procedure, the Ombudsman should wait until a reply is received from the Ministry of Education's working group regarding Mrs. H. before he requests the Committee to consider any further recommendations.

PART VI: COMMUNICATIONS RECEIVED FROM THE PUBLIC

Since the Committee's last report, the Subcommittee on Communications from the public has met three times. During the current period it has received correspondence from six members of the public. One of the letters was information only. The remaining five requested the Subcommittee to review the procedures used by the Ombudsman in investigating complaints. The Subcommittee has dealt with four of the matters and reported to the full Committee. In three of the cases, the Subcommittee determined that the Ombudsman's investigation was complete and fair. The fourth case, Mr. A. was originally dealt with by the Subcommittee in January 1988. The Committee adopted the following subcommittee recommendation:

That the Ombudsman reopen his investigation of "Mr. A"'s complaint and, in particular but without limiting the scope of this investigation, he first obtain further evidence concerning relevant issues, interviewing under oath if necessary additional witnesses including "Mr. A"'s supervisor, and provide "Mr. A" with an opportunity to make submissions in person on any or all statements about his character contained in the Ombudsman's existing report, and that he obtain further legal advice from an independent legal counsel on which legal issues surrounding the employment contracts of "Mr. A", which contracts were allegedly terminated, and give "Mr. A." or his legal counsel an opportunity to make submissions on those issues before any final conclusions are made; that the Ombudsman, after the investigation is concluded, report his findings, opinions, conclusions and recommendations, if any, to both "Mr. A" and the Committee as soon as possible.

The Ombudsman has completed his investigation and advised the Subcommittee of his findings. After giving full consideration to the matter, the Subcommittee determined that the Ombudsman's investigation was complete and fair and therefore recommended that no further action be taken and that Mr. A. be advised that his initial request is denied. The Committee has adopted that recommendation. The Committee wishes to reiterate that the Committee should only substitute its opinion for that of the Ombudsman in extreme circumstances where the Ombudsman's recommendations cannot be supported by the evidence or principles of law due to his failure to carry out his investigation competently or his failure to fulfill any or all of his responsibilities under the Ombudsman Act. It should not substitute its decision for the Ombudsman's merely where there is a reasonable difference of opinion on the evidence.

The fifth letter requesting a review of the Ombudsman's procedures will be dealt with in the near future by the Subcommittee.

In addition to dealing with communications received from the public, the Subcommittee gave consideration to its membership. It recommended that its membership be increased to four, one member from each party and also including the Chairman of the Committee. At the same time, it recommended revisions to the principles and procedures for dealing with communications from the public (see Appendices).

PART VII: EXPANSION OF THE OMBUDSMAN'S JURISDICTION

In 1986, the Ombudsman released a "Position Paper on Expanding the Jurisdiction of the Ombudsman." The Committee reviewed the paper on February 29, 1988 and by motion decided to conduct public hearings on the issue of expanding the Ombudsman's current jurisdiction into the areas of Children's Aid Societies, the Ontario New Home Warranty Program and public hospitals.

These hearings were held from August 11-25, 1988. A total of 18 groups appeared before the Committee and/or submitted position papers on expanded jurisdiction. Members of the Committee also travelled to Fredericton and Winnipeg during the last week of September and met with the Ombudsmen and legislators in those provinces regarding the matter of expanded jurisdiction. The jurisdiction of the Ombudsmen in these provinces most closely resembles that which the Ontario Ombudsman is seeking.

The submissions received during the hearings as well as the information obtained from consultations with the Ombudsmen from Manitoba and New Brunswick will be considered in detail during the Committee's discussions on this issue in the fall. The Committee's report with appropriate recommendations will be tabled in the House in the near future.

SUMMARY OF RECOMMENDATIONS FROM CURRENT AND PREVIOUS REPORTS

At the present time there are three Reports of the Standing Committee which have not been debated by the legislature: the Thirteenth Report (which included the Special Report on the ways in which the Assembly may act to make its voice heard against political killings, imprisonment, terror and torture) and the Fifteenth Report, both of which were on the order table at dissolution of Parliament; and the Sixteenth Report tabled in June 1988.

The Committee wishes to incorporate by reference in its Seventeenth Report those Reports and in particular those recommendations contained in the previous undebated Reports which remain unimplemented. These recommendations are reproduced below in conjunction with the Committee's current recommendations. The Special Report is reprinted in its entirety following the summary.

1. That the Ministry of Government Services and/or the Public Service Superannuation Board pay to the complainant the sum of \$2,239.91 plus interest, at 6.5% calculated annually from November 30, 1967 to the date payment is made, as compensation for lost pension benefits occasioned by the failure of the Director of the Pension Funds Branch to properly advise the complainant of the consequences of transferring his pension credits from the PSSF to the OMERS (Fifteenth Report Ministry of Government Services Public Service Superannuation Board Recommendation 5).

That the Committee delay action on this case until amendments to the Public Service Superannuation Act are introduced in the House (Sixteenth Report Ministry of Government Services Public Service Superannuation Board Recommendation 1).

That the Clerk of the Committee notify the Minister of the Ministry of Management Board to place in the Estimates for 1988-89, the Ministry of Government Services, Public Service Superannuation Board, the sum of \$2,239.91 plus interest at 6.5% calculated annually from November 30, 1967 to the date payment is made to Mr. "O" (Seventeenth Report, Ministry of Government Services Public Service Superannuation Board Recommendation 1).

2. That the Ministry of Health amend Ontario Regulation 596/85 in order to remove all age restrictions pertaining to the provision of companion travel grants under the Northern Health Travel Grant Program (Seventeenth Report, Ministry of Health Recommendation 2).
3. That the Ministry of Health arrange to provide donor sperm to Mr. and Mrs. J. at no cost as soon as an acceptable test has been developed to ensure that donor sperm is free from the AIDS virus (Seventeenth Report Ministry of Health Recommendation 3).

4. That the Ministry of Education cause the Teachers' Superannuation Commission to pay Mrs. H. survivor benefits as of August 8, 1985, and that the Ministry of Education, within three months of this motion, on or about November 22, 1988, report to this Committee on the advisability of extending this benefit as a matter of right to spouses of Teachers' Superannuation Fund members adversely affected. (Seventeenth Report, Ministry of Education Recommendation 4)
5. That the Committee direct the working group (as set up by the Minister of Education) to deal with the issue of Mrs. H.'s pension and the general issue of pensions, as soon as possible. (Seventeenth Report, Ministry of Education Recommendation 5)
6. That the Minister of Education, in conjunction with any other governmental organization he deems necessary, issue an *ex gratia* payment to Mrs. H. as soon as possible, effective from the first day of the month following the date of her inquiry for same, until the amended provision is in force. Such a payment can be made through the annual budgetary process, so that no question will arise as to the authority of the Ministry to make the payments; and,

That the Minister of Education, in conjunction with any other governmental organization he deems necessary, make spousal payments to any other surviving spouses who have been denied a full dependent or survivor allowance by the Teachers' Superannuation Act or the Teachers' Superannuation Act, 1983, payable from the first day of the month following the date of their request, for a benefit as a result of this recommendation.

7. That the Criminal Injuries compensation Board award appropriate compensation to the complainant for loss of income and pain and suffering as a result of the injuries sustained by him (Sixteenth Report Criminal Injuries Compensation Board Recommendation 7).

That the Criminal Injuries Compensation Board provide full written reasons to applicants for all decisions made under the Compensation for Victims of Crime Act (Sixteenth Report Criminal Injuries Compensation Board Recommendation 8).

That the Compensation for Victims of Crime Act be amended by deleting the words "for payment of compensation" from section 25(1) (Sixteenth Report Criminal Injuries Compensation Board Recommendation 9).

That the Criminal Injuries Compensation Board consent to an order of the Divisional Court extending the time for filing an appeal under the Compensation for Victims of Crime Act;

That the Board further consent to an order of the court setting aside its order of December 1, 1982 denying compensation to the complainant in this case and ordering that a new hearing be conducted; and

That the Board bear the legal costs of this appeal along with the reasonable travel and legal expenses of the complainant in attending the new hearing (Sixteenth Report Criminal Injuries Compensation Board Recommendation 10).

That the Criminal Injuries Compensation Board award appropriate compensation to Ms. D for loss of income and pain and suffering as a result of the injuries sustained by her, as well as additional costs including return transportation fare to a hearing in Toronto (if necessary) and reasonable babysitting expenses (Sixteenth Report Criminal Injuries Compensation Board Recommendation 11).

That the Board provide full written reasons to applicants for all decisions made under the Compensation for Victims of Crime Act (Sixteenth Report Criminal Injuries Compensation Board Recommendation 12).

That the Criminal Injuries Compensation Board consent to an order of the Divisional Court extending the time for filing an appeal under the Compensation for Victims of Crime Act;

That the Board further consent to an order of the court setting aside its order of November 24, 1982 denying compensation to the complainant in this case and ordering that a new hearing be conducted; and

That the Board bear the legal costs of this appeal along with the reasonable travel and legal expenses of the complainant in attending the new hearing (Sixteenth Report Criminal Injuries Compensation Board Recommendation 13).

8. That an independent adjudicator be appointed to assess the matter of whether or not interest is owed to the complainant (Thirteenth Report Ministry of the Environment Recommendation 2).

That the adjudication be styled as a hearing in the ordinary course, with an opportunity given to the parties to call and lead any evidence they consider appropriate;

That the principal amount upon which interest is to be calculated be clearly stated as a sum not to exceed \$27,730.00;

That the rate of interest applied by the adjudication be determined in accordance with the Courts of Justice Act; and

That the costs of adjudication be paid by the Ministry, except for the complainant's legal costs (Fifteenth Report Ministry of the Environment Recommendation 1).

9. That the Attorney General table immediately in the legislature a bill amending the Ombudsman Act (Thirteenth Report Amendments to the Ombudsman Act Recommendation 3).

That the amendments to the Ombudsman Act be tabled in the legislature without delay and that all parties cooperate in speeding the progress of the amending bill through the House (Fifteenth Report amendments to the Ombudsman Act Recommendation 6).

That the Attorney General give priority to introducing and approving amendments to the Ombudsman Act in the current or next session of the legislature (Sixteenth Report amendments to the Ombudsman Act Recommendation 2).



Standing Committee on the Ombudsman

Special Report

On the ways in which
The Assembly may act to
make its voice heard against
political killings, imprisonment,
terror and torture.

First Session, Thirty-Third Parliament
34 Elizabeth II



**STANDING COMMITTEE ON
THE OMBUDSMAN**

**Report on the ways in which
the Assembly may act to
make its voice heard against
political killings, imprisonment,
terror and torture**

STANDING COMMITTEE ON THE OMBUDSMAN



COMITÉ PERMANENT DE L'OMBUDSMAN

LEGISLATIVE ASSEMBLY
ASSEMBLÉE LÉGISLATIVE

The Honourable Hugh Edighoffer, M.P.P.,
Speaker of the Legislative Assembly.

Sir,

Your Standing Committee on the Ombudsman has the honour to present its
Report and commends it to the House.

Ronald K. McNeil

Ronald K. McNeil, M.P.P.
Chairman

Queen's Park
30 January 1986

**MEMBERSHIP OF THE STANDING COMMITTEE ON
THE OMBUDSMAN**

RONALD K. McNEIL
Chairman

HOWARD SHEPPARD
Vice-Chairman

REUBEN BAETZ
MAURICE BOSSY
PATRICK HAYES
D. JAMES HENDERSON
GILLES MORIN

BERNARD NEWMAN
ED PHILIP
F. JACK PIERCE
YURI SHYMKO

TODD J. DECKER
Clerk of the Committee

JOHN P. BELL
Counsel to the Committee

MERIKE MADISSO
Research Officer

In April, 1983 the Select Committee on the Ombudsman ("Select Committee") tabled its Special Report on Human Rights. This Report was prepared by the Select Committee in response to the Resolution of the Legislature dated May 29th, 1980 and made by the late James Renwick, M.P.P. The Select Committee recommended in the Report that its order of reference be expanded as follows:

THE COMMITTEE SHALL, WHEN IT CONSIDERS IT NECESSARY, CONSIDER, REVIEW, REPORT AND RECOMMEND TO THE LEGISLATURE ON WAYS IN WHICH THE ASSEMBLY CAN ACT TO OPPOSE AND CONDEMN ACTS OF POLITICAL KILLINGS, IMPRISONMENT, TERROR AND TORTURE AND ANY OTHER ACTS WHICH MAY BE INCLUDED IN ANY COVENANT OR DOCUMENT TO WHICH CANADA IS OR MAY BECOME A SIGNATORY; AND, IN PARTICULAR, THE COMMITTEE SHALL HAVE THE POWER TO CONSULT WITH, AND IF DEEMED APPROPRIATE, ESTABLISH FORMAL RELATIONSHIPS WITH, AND PROVIDE ACTUAL SUPPORT TO GOVERNMENT AND NON-GOVERNMENTAL ORGANIZATIONS WHOSE AIMS AND OBJECTIVES ARE DEDICATED TO THE ELIMINATION OF THE KINDS OF ACTS MENTIONED ABOVE.

THE COMMITTEE SHALL FURTHER HAVE THE POWER TO RECEIVE, CONSIDER AND REVIEW SPECIFIC EXAMPLES OF THE KINDS OF ACTIONS HEREIN MENTIONED AND, IF DEEMED ADVISABLE, TO REPORT THEREON TO THE LEGISLATURE WITH ANY RECOMMENDATIONS FOR ACTIONS WHICH THE LEGISLATURE MIGHT TAKE; AND PURSUANT TO THE ABOVE, THE COMMITTEE SHALL HAVE THE POWER TO SIT CONCURRENTLY WITH THE HOUSE AT SUCH TIMES AS IT CONSIDERS NECESSARY AND APPROPRIATE.

Notwithstanding that the Report had been on the Order Paper in the 32nd Parliament, it was never debated. This Committee is committed to the implementation of the substance of the recommendation contained in the Report. The need today to assist the Legislature in making its voice heard on the matter of international human rights still exists. Accordingly, the Committee adopts as its own Report the Select Committee's Report. For the assistance of Members of the House the Report is annexed hereto as Appendix "A".

To accommodate this Committee's different status, relative to the Select Committee, it amends the recommendation set forth on the Report to read as follows:

The Standing Committee recommends that its order of reference be expanded as follows:

The Standing Committee shall, when it considers it necessary, consider, review, report and recommend to the Legislature on ways in which the Assembly can act to oppose and condemn acts of political killings, imprisonment, terror and torture and any other acts which may be included in any covenant or document to which Canada is or may become a signatory; and, in particular, the Standing Committee shall have the power to consult with, and if deemed appropriate, establish formal relationships with, and provide actual support to government and non-governmental organizations whose aims and objectives are dedicated to the elimination of the kinds of acts mentioned above.

The Standing Committee shall further have the power to receive, consider and review specific examples of the kinds of actions herein mentioned and, if deemed advisable, to report thereon to the Legislature with any recommendations for actions which the Legislature might take; and pursuant to the above, the Standing Committee shall have the power to sit concurrently with the House at such times as it considers necessary and appropriate.

The Committee further recommends that this Report be placed on the Order Paper for early debate.



LEGISLATIVE ASSEMBLY
ASSEMBLÉE LÉGISLATIVE

The Honourable John M. Turner
Speaker of the Legislative Assembly

April 1, 1983

Sir,

We, the undersigned Members of the Select Committee on the Ombudsman have the honour to submit the attached report on ways in which the Assembly may act to make its voice heard against political killings, imprisonment, terror and torture, in accordance with the Order of the House, October 13, 1982.

ROBERT W. RUNCIMAN, M.P.P.
Chairman

ROBERT MACQUARRIE, Q.C., M.P.P.

ROBERT MITCHELL, M.P.P.

RENE PICHE, M.P.P.

YURI SHYMKO, M.P.P.

DON BOUDRIA, M.P.P.

RON VAN HORNE, M.P.P.

TONY LUPUSELLA, M.P.P.

MICKEY HENNESSY, M.P.P.

DAVID COOKE, M.P.P.

WILLIAM HODGSON, M.P.P.

KINS, M.P.P.

MEMBERS OF THE SELECT COMMITTEE
ON THE
OMBUDSMAN

| | |
|--------------------------------------|---------------------|
| ROBERT W. RUNCIMAN, M.P.P., Chairman | Leeds |
| YURI SHYMKO, M.P.P. | High Park-Swansea |
| JOHN EAKINS, M.P.P. | Victoria-Haliburton |
| DON BOUDRIA, M.P.P. | Prescott-Russell |
| RONALD G. VAN HORNE, M.P.P. | London North |
| DAVID COOKE, M.P.P. | Windsor-Riverside |
| RENE PICHE, M.P.P. | Cochrane North |
| WILLIAM HODGSON, M.P.P. | York North |
| ROBERT C. MITCHELL, M.P.P. | Carleton |
| ROBERT MACQUARRIE, Q.C., M.P.P. | Carleton East |
| MICKEY HENNESSY, M.P.P. | Fort William |
| TONY LUPUSELLA, M.P.P. | Dovercourt |

| | |
|--------------|--------------------------|
| JOHN P. BELL | Counsel to the Committee |
| GRAHAM WHITE | Clerk of the Committee |

The Committee wishes to acknowledge the contribution of the following current and former Members of the Legislature who served on the Committee during its consideration of political and human rights:

| | |
|-------------------|--------------------|
| Margaret Campbell | Robert Eaton |
| Jim Gordon | Ed Havrot |
| Colin Isaacs | George Kerr |
| John Lane | Patrick Lawlor |
| Ross McClellan | Gordon Miller |
| Ed Philip | Margaret Scrivener |
| James Taylor | Richard Treleaven |
| Osie Villeneuve | |

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INTRODUCTION

In its Ninth Report, the Committee commented upon its work respecting the Resolution of the House as follows:

"A. Resolution of the Legislative Assembly dated May 29th, 1980

On the 29th of May, 1980, the Legislative Assembly passed a resolution put forward by Mr. James Renwick, Q.C., M.P.P.:

"That this Assembly request the Select Committee on the Ombudsman to consult with the United Nations Commission on Human Rights, Amnesty International and the International Commission of Jurists and others, if advisable, with a view to reporting to this Assembly on ways in which this Assembly may act to make its voice heard against political killings, imprisonment, terror and torture."

The Committee in its eighth report advised the Assembly that it intended to meet with a number of other groups and individuals beyond the three mentioned in the resolution. However, the Committee's work in this regard was not complete when the Legislature was dissolved.

The Committee is of the opinion that the work started by its predecessor committee should and must be completed to give full effect to the unanimous resolution passed by the House in May of 1980. The Committee concurs whole-heartedly with the resolution and with the work which the Committee had completed up to dissolution.

Strictly speaking, the completion of the task outlined in this resolution is beyond the Committee's original terms of reference. For this reason it obtained approval of the Legislature on October 13, 1981 to complete the work of its predecessor committee."

The Committee reviewed the evidence presented to its predecessor and held further meetings in February, 1982. This report is based on all opinions, advice and documentation presented to the Committee since 1980.

From the outset, the Committee's approach to its work has reflected the themes running through the House Debate of May, 1980: a recognition that the evils of political killing, torture and imprisonment pervade the world; a strong sense that all persons fortunate enough to enjoy the benefits of a free, democratic society have an obligation to speak out and to exert their influence against such evils; uncertainty as to how the Legislative Assembly of Ontario could act only to "make its voice heard", but also to take effective action to set right these manifest wrongs; and concern as to the extent to which the Ontario Legislature can act on matters which occur in other countries.

These themes led the Committee to canvass a broad spectrum of opinion from those Canadian organizations and individuals knowledgeable and experienced in matters of international, human and political rights. They further prompted the Chairman of the Committee to write the Secretary of State for External Affairs seeking his guidance and support. Appendix "A" to this Report is the exchange of correspondence between the Chairman and the Secretary of State for External Affairs.

In addition to offering his written support the Federal Minister sent as his representative to the Committee a senior diplomat with extensive experience in human rights matters who strongly encouraged the Committee that its work was not only entirely proper, but extremely important and beneficial within the overall context of the Canadian federalism.

The following groups and individuals appeared before the Committee. The Committee wishes to acknowledge their assistance and to commend their dedication to the ideal of international political rights.

Amnesty International

Canadian Parliamentary Helsinki Group

Government of Canada, Department of External Affairs
- Ambassador Yvon Beaulne, Canadian Ambassador to
the Holy See and Canadian Representative on the
United Nations Human Rights Commission

International Commission of Jurists (Canadian Section)

Interparliamentary Union

Inter-church Committee on Human Rights in Latin
America

Patrick D. Lawlor, Q.C.

Cannon Borden Purcell, Chairman, Ontario Human
Rights Commission

James A. Renwick, Q.C., M.P.P.

Professor Walter Tarnopolsky, Member, Canadian
Human Rights Commission; Canadian Delegate to the
United Nations Committee on Human Rights

Task Force on Churches and Corporate Responsibility

Early in its deliberations, the Committee conferred with the Ombudsman, who whole-heartedly supported the intent of the Resolution, but expressed the opinion that, owing to the limitations of his jurisdiction, he could not be of assistance to the Committee in this respect.

FINDINGS

No submission was put to the Committee more strongly, and more consistently than the position that the Legislature does have the right to take steps to make its voice heard on the matters contained in the Resolution. Some even went so far as to urge the Committee to conclude that the Legislature has a duty to act, particularly in view of Ontario's role in the ratification of the International Covenant on Civil and Political Rights.

The Committee has concluded that the Legislative Assembly does have authority in law to "act to make its voice heard against political killings, imprisonment, terror and torture.". It may in fact have a legal duty in so far as Ontario's participation in the ratification of United Nations covenants imposes obligations on it in the international field.

In the Committee's opinion the critical question is not whether the Legislative Assembly has the legal authority to act in this way. The critical question is now: what is the extent to which the Legislative Assembly can act. Put more directly, to what extent can the Legislative Assembly take any action intended to influence actions in a foreign jurisdiction which result in political killings, imprisonment, terror or torture.

In 1983, a year after the proclamation of Canada's new Constitution, the answer to this question is far from clear. On the one hand, there are those, relying

upon the "Labour Conventions" case (A.G. Canada vs A.G. Ontario (1937) A.C. 326), who maintain that the provinces have, through the vehicle of treaty making, some authority to become directly involved in the field of international affairs.

On the other hand is the apparent prevailing view, which certainly is held by the Federal Government, that the provinces cannot act directly and independently of the Government of Canada in this area. Historically, the provinces have conducted themselves substantially in accordance with this point of view.

A comparative analysis of these two positions will not lead to a resolution of the critical question. In the Committee's opinion, the resolution is found in a statement of the Premier in the Legislature on June 10, 1982. Although the context of his remarks is "Nuclear Disarmament" the principle enumerated is equally applicable to the issues raised by the Resolution.

"Matters of foreign policy and matters of defence policy obviously do not fall within the constitutional responsibilities of the government of our province. Therefore, we have been, in the past, genuinely reticent to express explicit points of view in areas of international negotiations or foreign policy. Such matters are justifiably the responsibility of the government and Parliament of our nation.

Nevertheless, there are certain issues that are so wide-reaching, and of such global significance, to each and every one of us, as human beings and as citizens of the world, that we have a responsibility to search our conscience and share with ourselves the things we care about the most."

This matter was also eloquently addressed by The Honourable R. Roy McMurtry at the Second Annual Anatoli Scharansky Lecture in Toronto, (June 6, 1982) when he re-affirmed the Government of Ontario's commitment that "we will

continue to promote international human rights and at every opportunity we will reaffirm our commitment to individual justice and the rule of law".

Certainly, the commitment of the Legislative Assembly of the Province of Ontario can be no less than the commitment of the Government of Ontario as articulated by the Premier and the Attorney General.

The remarks of the Premier and the Attorney General clearly support the point of view repeatedly expressed to the Committee by the witnesses who appeared before it: the Province of Ontario, provided it operates within the "proper channels", that is, through the Government of Canada, has a clear and necessary role to play in dealing with matters such as political killings, imprisonment, terror or torture.

It may come as a surprise to some Members that senior representatives of Canada in the field of foreign affairs have not only acknowledged such a role for Ontario but have encouraged such involvement without further delay.

THE NEED FOR A PERMANENT MECHANISM

The Committee has concluded that, in order for the Legislature to ensure that its commitment to the spirit of the Resolution be fulfilled, there must exist a vehicle, capable of acting quickly, which could bring appropriate matters to the Legislature's attention on a continuing basis, and which could offer advice and recommendations on appropriate courses of action. Thus, the question of the extent to which the Legislature can act will be continuously reviewed.

The suggestion most frequently made to this Committee on how this goal might be achieved, was that a permanent committee of the Legislature be charged with overseeing human and political rights, with particular emphasis on political torture, imprisonment and killing. Proposals as to the precise nature and structure of this committee varied: some suggested that the Select Committee on the Ombudsman should assume these responsibilities; others were in favour of creating a new Standing Committee, and one proposal was for a special Speaker's committee with unique mandate and powers. Agreement was general, however, that the Assembly required some mechanism for maintaining a watching brief on international human and political rights, and for advising the Assembly on specific action it might take.

The Committee has concluded that, while the creation of a new permanent committee of the Legislature is the desirable vehicle, it is, at least for the present, not practical so to do.

The best alternative in the circumstances is that this Committee's order of reference be expanded to permit it to serve the Legislature as the "permanent vehicle". Of all existing Committees it is most suitable in that:

- (a) this Committee already has the relevant background and experience as a result of its work leading to this report;
- (b) the general subject matter has parallels to the concept of the Ombudsman;
- (c) this Committee has in place staff qualified to undertake the ongoing work necessary to fulfil the expanded terms of reference;
- (d) generally this Committee has functioned on a non-partisan basis, an approach which must prevail with any Committee charged with these responsibilities.

HOW THE LEGISLATURE CAN ACT

At this stage, it is impossible to delineate with any certainty all of the ways which the Legislative Assembly can act to "make its voice heard". In the final analysis those ways can only really be developed after the Legislature and the Committee has had actual involvement in specific cases.

In any event, however, to ensure that the Legislative Assembly is able to effectively act in this area it will be necessary for the Committee to develop resources and a pool of expertise upon which the Legislature can draw in evaluating the most appropriate course of action in any given case.

To fulfil this requirement, the Committee intends to establish formal relationships with knowledgeable persons in the Department of External Affairs, the Ministry of Inter-Governmental Affairs and the relevant Committees of the Parliament of Canada and the United Nations. Formal relationships will also be established with certain appropriate non-governmental organizations which actively work to promote human and political rights in the world such as Amnesty International, International Commission of Jurists, and the Interparliamentary Union.

These formal relationships will serve to establish a "presence" of the Legislative Assembly in the area of world human rights. It will also ensure that the Committee is kept continuously informed of significant, specific crises as well as longer term developments in this field.

It is, of course, the Committee's intention that these relationships will be established in the name of the Legislative Assembly of the Province of Ontario as one of the ways in which the Assembly can "make its voice heard". The Legislative Assembly will be thereby continuously involved in world human rights.

The Committee foresees its role on behalf of the Assembly to consist of the following:

- (a) notification from any source, including a member of the Legislative Assembly, of circumstances in the world where it is alleged human or political rights are violated;
- (b) consideration of the circumstances surrounding the alleged violation;
- (c) deliberation upon an appropriate course of action to be adopted by the Legislative Assembly;
- (d) report to the Assembly with recommendations.

The Committee also intends to monitor responses to actions taken by the Legislature and in turn report regularly thereon together with any recommendations for further action by the Legislature.

Without in any way restricting the generality of the types of actions which the Legislative Assembly might take upon a recommendation from the Committee, or on its own, the following is a partial list of proposals for action by the Assembly which has been put to the Committee by those who have appeared before it:

- (a) the passage of formal resolutions by the Assembly expressing general support for human and political rights and condemning particular cases of repression and political violence;

- (b) with respect to individual cases, the passage of resolutions specifically deploring the suppression of the human and political rights of parliamentaries throughout the world and relatives of Ontario residents;
- (c) reviewing and improving conditions for persons who have come to Canada as political refugees;
- (d) promoting of ratification by Ontario of the United Nations draft code of conduct for law enforcement officials;
- (e) assisting non-governmental organizations financially or through the secondment of legislative staff;
- (f) promoting the review and strengthening of Canadian legislation on political terrorism;
- (g) organizing and participating in conferences of Canadian legislators on the subject of world human rights;
- (h) participating, as part of Canadian delegations, in international meetings on human rights;
- (i) promoting sanctions against jurisdictions which engage in political torture, imprisonment and killing;
- (j) reviewing educational policies and practices in Ontario designed to foster an understanding and appreciations of fundamental human and political rights.

The Committee has not yet decided whether any or all of these possible courses of action are appropriate. Those decisions can only be taken after the Committee has gained further insight and experience and has studied the appropriateness of each course of action in the context of specific human rights violations.

The Committee wishes to assure the Members of the Legislature that, except for establishing relationships with governmental and non-governmental agencies as discussed above, it will not on any matter of world human rights act on its own accord. Its function is purely that of agent of the Legislature.

The Committee also wishes to assure the Legislative Assembly that it does not propose that to include within its mandate issues of "domestic" human rights, for example, alleged violations of the Ontario Human Rights Code. There are already in place in Ontario the mechanisms to deal with those issues.

Finally, the Committee wishes to emphasize that it is mindful of its limitations. The Committee does not expect to be meeting weekly on human rights matters, but rather to meet from time to time to review general matters related to its mandate and to be ready to deal quickly with specific allegations of violations of human rights elsewhere in the world. Certainly the Committee will not let its concerns with international political rights interfere with its responsibility of reviewing the reports of the Ombudsman and of reporting to the Assembly on these reports and related matters.

RECOMMENDATION

The Committee recommends that ITS ORDER OF REFERENCE BE EXPANDED AS FOLLOWS:

"THE COMMITTEE SHALL, WHEN IT CONSIDERS IT NECESSARY, CONSIDER, REVIEW, REPORT AND RECOMMEND TO THE LEGISLATURE ON WAYS IN WHICH THE ASSEMBLY CAN ACT TO OPPOSE AND CONDEMN ACTS OF POLITICAL KILLINGS, IMPRISONMENT, TERROR AND TORTURE AND ANY OTHER ACTS WHICH MAY BE INCLUDED IN ANY COVENANT OR DOCUMENT TO WHICH CANADA IS OR MAY BECOME A SIGNATORY; AND, IN PARTICULAR, THE COMMITTEE SHALL HAVE THE POWER TO CONSULT WITH, AND IF DEEMED APPROPRIATE, ESTABLISH FORMAL RELATIONSHIPS WITH, AND PROVIDE ACTUAL SUPPORT TO GOVERNMENT AND NON-GOVERNMENTAL ORGANIZATIONS WHOSE AIMS AND OBJECTIVES ARE DEDICATED TO THE ELIMINATION OF THE KINDS OF ACTS MENTIONED ABOVE.

THE COMMITTEE SHALL FURTHER HAVE THE POWER TO RECEIVE, CONSIDER AND REVIEW SPECIFIC EXAMPLES OF THE KINDS OF ACTIONS HEREIN MENTIONED AND, IF DEEMED ADVISABLE, TO REPORT THEREON TO THE LEGISLATURE WITH ANY RECOMMENDATIONS FOR ACTIONS WHICH THE LEGISLATURE MIGHT TAKE; AND PURSUANT TO THE ABOVE, THE COMMITTEE SHALL HAVE THE POWER TO SIT CONCURRENTLY WITH THE HOUSE AT SUCH TIMES AS IT CONSIDERS NECESSARY AND APPROPRIATE."

The Committee was concerned that the recommendations it proposed to the Assembly be more than hollow posturing and pious but ineffective words. For if the resolution of the Assembly specifically enjoined the Committee to advise it on ways "to make its voice heard", the implication was clear that the ultimate objective was not merely the expression of the Legislature's opinion but tangible improvement in the lot of persons whose human and political rights are being involved. In short, the Committee seeks results not gestures.

After reviewing the evidence presented by individuals and groups with a great deal of experience in cases of political imprisonment, torture and killing, the Committee has concluded that the Legislative Assembly of Ontario can indeed be an effective force against these evils. The Committee is under no illusions that the overall results will not be slight and the process slow, difficult and frustrating. Yet time and again the Committee was shown that publicity, political pressure, even personal appeals have achieved surprisingly positive results. To be sure, certain repressive regimes are entirely impervious to any sort of publicity or pressure; yet many others have demonstrated that they are sensitive to world public opinion and adverse publicity. Moreover, such countries may take the absence of criticism of their violation of human and political rights as tacit approval of their practices. Finally, as the Committee was told by a former victim who had been released from custody because of the intervention of concerned individuals throughout the world, the support and concern of complete strangers can be a powerful psychological boost for the victims of political torture and imprisonment.

Clearly, the passage of a resolution in the Ontario Legislature condemning human rights violations in certain countries will not magically result in the cessation of torture and the release of political prisoners. The evidence is clear, however, that such action is an important element in eventually improving general conditions or righting individual wrongs. Formal steps by the Assembly in these matters are particularly significant; the expression of opinion by freely-elected and democratically responsive members of the Legislative Assembly is an especially clear and powerful signal of popular concern over human rights violations.

The Assembly cannot turn its back on the limited yet very real potential to help those suffering from political torture and imprisonment. Truly, in the words of Edmund Burke,

"the only way evil will ever dominate is if good men do nothing."

July 3, 1980

The Honourable Mr. Mark MacGuigan
Minister
External Affairs Department
Lester B. Pearson Building
125 Sussex Drive
OTTAWA, Ontario K1A 0G2

Dear Mr. Minister:

Re: Universal Political Rights

On the 29th of May, 1980, the Legislature concurred in a Resolution moved by Mr. Renwick:

"That this assembly request the select committee on the Ombudsman to consult with the United Nations Commission on Human Rights, Amnesty International and the International Commission of Jurists and others, if advisable, with a view to reporting to this assembly on ways in which this assembly may act to make its voice heard against political killings, imprisonment, terror and torture".

I enclose a copy of the Hansard Debates of that motion as well as a copy of the deliberations of the Select Committee on the Ombudsman on July 2nd, 1980 wherein preliminary discussions respecting the resolution took place..

My purpose in writing to you is two-fold. First, to inform you of this step taken by the Legislature of the Province of Ontario in the area of Human Rights. Secondly, to invite any comments which you and your Ministry feel are appropriate and which may assist the Committee in its deliberations.

I noted with interest the debate on the motion, including your own comments. You will be interested to know that Canada plays a significant role in the protection and promotion of international human rights, both in international fora and in our bilateral relations with other countries. Canada is represented on all the major international human rights bodies including of course, the U.N. Commission on Human Rights, and indeed Mr. Beaulne was chairman of the annual Commission meeting in 1979. We have sponsored and actively supported resolutions in the United Nations and elsewhere to develop effective international mechanisms to deal with human rights situations and to encourage universal adherence and closer compliance with them. Mr. Beaulne is eminently qualified to brief the Select Committee on Canada's activities in this field.

Yours sincerely,

A handwritten signature in dark ink, appearing to read 'Mark MacGuigan', with a stylized, cursive-like script.

Mark MacGuigan



Canada

OTTAWA, K1A 0G2

July 22, 1980

Pat
Dear Mr. Lawlor,

Thank you for writing on July 3 to inform me of the Legislature's Resolution of May 29 concerning the means available for indicating support for major human rights bodies such as the United Nations Commission on Human Rights, Amnesty International and the International Commission of Jurists. In this regard I welcome the proposal to invite Canada's representative to the United Nations Commission on Human Rights, Mr. Yvon Beaulne to meet with the Select Committee on the Ombudsman. He has, of course, heavy responsibilities both as Ambassador to the Vatican and as representative of Canada on the U.N. Commission. However, there is a good possibility that Mr. Beaulne will be in Canada for a brief period during the fall and may be able to meet with you. I have asked my office to be in touch with you closer to the time about this. If by chance the Committee's schedule and that of Ambassador Beaulne cannot be reconciled, I would be pleased to ask one of my officials directly concerned with human rights questions to meet with you.

With regards to Amnesty International and the International Commission of Jurists, I have encouraged closer contacts with those organizations by my Department and I appreciate why the Legislature would want to indicate to them its support for the important work they do in the human rights field. I am sure that the Select Committee will be developing such contacts.

.../2

Mr. Patrick D. Lawlor, Q.C., M.P.P.
Chairman
Select Committee on the Ombudsman
Room 110
Main Parliament Building
Queen's Park
Toronto, Ontario
M7A 1A2

The Committee has decided to invite the Canadian Representative on the United Nations Commission on Human Rights, Mr. Yvon Beaulne, to appear before it sometime this fall. It is intended that Mr. Beaulne, who is an official of your Ministry, may offer some suggestions, in his capacity as representative on that Commission, as to how the Legislative Assembly of the Province of Ontario may act to "make its voice heard".

Since Mr. Beaulne is an official of your Ministry, the Committee wished to advise you in advance of its intention and to seek any comments or suggestions you may have in that regard.

Yours very truly,

PDL/jb
Encls.

PATRICK D. LAWLOR, Q.C., M.P.P.
Chairman
Select Committee on the
Ombudsman

APPENDIX A

Principles and Procedures for Dealing with Communications with the Public

APPENDIX A

PRINCIPLES AND PROCEDURES FOR DEALING WITH COMMUNICATIONS WITH THE PUBLIC

Every year, The Standing Committee on the Ombudsman receives a number of written and oral submissions from the public. Some simply wish to comment on decisions or procedures of the Ombudsman's office, however many request action by the Committee.

The Committee's practice has been to review all communications with a view to deciding whether to pursue the matter in some detail. In the majority of cases the Committee has pursued some of the matters raised by the communicant if it dealt with mistakes in the investigative method of the investigation. However the Committee primarily does not believe that its function is to "second guess" the Ombudsman or to re-investigate cases in which complainants do not accept the Ombudsman's decisions.

Subsequently the Sub-committee has set some principles to follow.

PRINCIPLES

1. At all times and in all circumstances, the committee sets its own procedures and determines how communications are to be handled, subject to the provisions of the Committee's order of reference and to the provisions of the Ombudsman Act.
2. The Committee has consistently declined to act as a "court of appeal" on decisions by the Ombudsman, or an "Ombudsman on the Ombudsman".
3. Each case raised by a member of the public will be individually considered and decided by the Committee on its own merits.
4. No one has an automatic "right" to appear before the Committee. The Committee will review the documents in each instance before deciding whether to extend any invitations to appear before the Committee.
5. Except in very unusual circumstances, all information, correspondence and reports exchanged between the communicant and the Committee and between the Ombudsman and the communicant are shared between the Committee and the Ombudsman. Because of the confidentiality required by the Ombudsman by his Act, documents exchanged between Ombudsman and persons and organizations other than complainant are not released to the Committee, except as they may be quoted or cited in the Ombudsman's report to the complainant.
6. The Committee reviews the documents supplied to it and takes its decisions at an open, public meeting, but names of communicants are not used and the documents do not form part of the Committee's public record.
7. In dealing with persons who communicate with it, the Committee and its staff should be careful not to raise false hopes of possible favourable resolutions of complaints or problems.
8. The Committee will not consider any communication if it involves a complaint which the Ombudsman is still investigating or may still investigate.

APPENDIX B

**Information for Persons who
Contact the Standing Committee on the Ombudsman**

APPENDIX B

INFORMATION FOR PERSONS WHO CONTACT THE STANDING COMMITTEE ON THE OMBUDSMAN

Authorized by the Committee

People write or call the Committee for a number of reasons. For example, they request that the Committee reconsider or reinvestigate complaints which the Ombudsman has investigated; they request that the Committee overrule conclusions reached by the Ombudsman with which they disagree; they complain about the methods or the motives of the Ombudsman's staff; they offer suggestions for the improved operation of the Office of the Ombudsman or of the Ombudsman Act; and they request an opportunity to appear in person before the Committee for a wide variety of reasons.

The Committee has established a Sub-committee to deal with all such communications received by the Committee. This Sub-committee is composed of M.P.P.s of all three political parties represented in the Legislature. Its decisions must be unanimous; if any Member of the Sub-committee disagrees with any proposed action, the matter is automatically referred to the full Committee for consideration.

The Sub-committee individually reviews each submission to it, primarily on the basis of documents supplied to it by the person who has contacted the Committee. Whether or not the person requests it, all documents are treated confidentially; that is, they are not made public. Moreover, the names and identifying references to all persons mentioned in the documents are removed by the Committee staff, so that the Members of the Sub-committee will not know the names of the persons involved. This is done to ensure complete impartiality in the Sub-committee's review of the case.

All documents provided to the Committee are also supplied to the Ombudsman for his consideration and possible reply. Occasionally, the Ombudsman will request the person who has contacted the Committee to sign a release form so that he may supply certain documents to the Sub-committee without contravening the confidentiality requirements of the Ombudsman Act.

Although the Sub-committee reviews each matter submitted to it, and decides each one on its individual merits, it is most unusual for the Sub-committee to recommend any action or to grant a person's request to appear in person.

This reflects the Committee's strongly held view that, except in the most unusual circumstances, the Committee should not even consider intervention in complaints investigated by the Ombudsman. The Committee has consistently refused to act as an appeal body for cases persons who have complained to the Ombudsman are not satisfied; by or disagree with, the conclusions reached by the Ombudsman. Otherwise, the Committee would simply be taking over the Ombudsman's job, and this is not what the Legislature intended when it created the Committee.

The Committee welcomes comments which may help to improve the service provided by the Office of the Ombudsman to the people of Ontario, but it will normally not become involved in individual cases.

APPENDIX C

Procedures

APPENDIX C

PROCEDURES

1. Letter is received by the Chairman or the Clerk of the Committee directly from members of the public or by referral from the Speaker or other M.P.P..(If first communication is oral, the Clerk or the Chairman should ask that, if at all possible, the matter be put in writing for the Committee's consideration.)
2. The Clerk acknowledges receipt of letter on behalf of the Chairman. The letter from the Clerk should be non-committal, indicating that the Committee will review the letter and the issues raised in it before deciding either to pursue the matter in detail or to invite the communicant to appear before the Committee. The Clerk should also make it clear that, due to the Committee's schedule, it may be some time before the Committee will consider the complaint. Letter includes statement authorized by the Committee setting out its policy on communications from the public (See Appendix A). If not included with original communication, the Clerk should solicit a copy of the Ombudsman's report to complainant and other relevant correspondence from Ombudsman to communicant (for example, Ombudsman's responses to previous letter of criticism from communicant).
3. The Clerk should forward a copy of the letter and any documents to the Ombudsman. (Ombudsman may obtain authorization from complainant so that otherwise confidential documents exchanged between Ombudsman and communicant may be released to Committee via the Clerk or the Counsel.)
4. The Clerk meets with the staff of the Ombudsman to discuss communication. The Clerk selects for distribution to Committee such documents as deem relevant. At a minimum, all written submissions from communicant and the Ombudsman's report to complainant (or letter indicating that the Ombudsman will not be investigating) should be distributed to the Committee. Normally, only pro forma acknowledgments, covering letters and obviously extraneous material should be excluded from material provided to the Committee.
5. The Clerk should remove names and identifying references to communicant, Ombudsman staff and others from all copies of documents. In order to preserve comprehensibility, initials of surnames may be retained.

6. The Clerk provides anonymized documents to Sub-committee on Communications from the Public with covering memo summarizing the case and highlighting the principal issues to be decided by the Sub-committee.
7. In a public meeting, the Sub-committee reviews documents with the Clerk and with the Ombudsman's representatives. The documents do not form part of the Committee or Sub-committee's public record.
8. In a public meeting, the Sub-committee decides what action to take:
 - none
 - further correspondence with communicant
 - refer specific case, or issue raised by case, to full committee
 - other
9. If the Sub-committee decides to take no further action, the Chairman writes a polite, but firm letter indicating that the Committee has declined to pursue the matters raised by the communicant. If appropriate, without discussing the merits of the case, the Chairman indicates that the Committee's principle of not "second guessing" the Ombudsman.
10. Once the Committee has concluded its consideration of a specific case, the Clerk collects all the documents provided to the Sub-committee and destroys them. The Clerk retains only a file copy, which is not public and is never transmitted to the Archives.
11. If the communicant is not satisfied with the Sub-committee's decision, the Chairman informs him that the Sub-committee will only reconsider the matter if "new information" is available, and only then if the new information is first made available to the Ombudsman for possible reconsideration of his conclusions. Until the Ombudsman decides not to reopen a complaint or, having reopened the complaint, reaches a conclusion on it, the Sub-committee will not further consider the matter.

APPENDIX D

**Terms of Reference for
the Subcommittee on Communications with the Public**

APPENDIX D

TERMS OF REFERENCE FOR THE SUBCOMMITTEE ON COMMUNICATIONS WITH THE PUBLIC

Ordered. That a Sub-committee be struck to consider on the Committee's behalf communications from the public; the Sub-committee to be composed of one member from each party and the Chairman of the Committee, with a quorum of 4; substitutions shall be permitted on written notice. All communications from the public to the Committee shall be referred to the Sub-committee, which shall review and respond to them, provided that all decisions by the Sub-committee shall be unanimous; any matters which are not decided unanimously by the Sub-committee shall be considered by the full Committee. The Sub-committee shall report to the Committee, for consideration by it, any matters which in the Sub-committee's opinion warrant the full Committee's attention. The Sub-committee shall, subject to direction by the Committee, determine its procedures.

(Committee Minutes, November 16, 1988)

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Ontario

Standing Committee on the Ombudsman

Eighteenth Report 1990



2nd Session, 34th Parliament
38 Elizabeth II



LEGISLATIVE ASSEMBLY
ASSEMBLÉE LÉGISLATIVE

TORONTO, ONTARIO
M7A 1A2

The Honourable Hugh Edighoffer, M.P.P.
Speaker of the Legislative Assembly

Sir,

Your Standing Committee on the Ombudsman has the honour
to present its 18th Report and commends it to the House.

Murad Velshi

Murad Velshi, M.P.P.
Chair

Queen's Park
November, 1989

MEMBERSHIP OF THE STANDING COMMITTEE ON
THE OMBUDSMAN

MURAD VELSHI
CHAIR

DAVID R. COOKE (Kitchener)
VICE-CHAIR

MAURICE BOSSY

KEITH MacDONALD

MARION BRYDEN

ED PHILIP
(Etobicoke-Rexdale)

DOUG CARROTHERS

JIM POLLOCK

DON COUSENS

JOAN SMITH
(London South)

JAMES HENDERSON

Franco Carrozza
Clerk of the Committee

JOHN P. BELL
Counsel to the Committee

CATHERINE EVANS
and
JENNIFER WILSON
Research Officers

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PART I: INTRODUCTION

This Report of the Standing Committee on the Ombudsman reviews the Sixteenth Annual Report of the Ombudsman for the fiscal year 1988-89, and a Special Report dealing with the case of Ms W. The Ombudsman's Annual Report was tabled in the Legislature on June 29, 1989; the Special Report was tabled on September 29, 1989.

The Committee notes that the Ombudsman's Annual Report covers events during the final year of Dr. Hill's tenure. As a result, the Committee makes reference in this Report to both Dr. Hill who was Ombudsman for the report period and Ms. Meslin who was acting Ombudsman when the Annual Report was tabled.

In addition to reviewing the Ombudsman's Annual and Special Report, this Report will look at matters outstanding from prior Committee and Ombudsman reports.

PART II: APPOINTMENT OF A NEW OMBUDSMAN

In anticipation of the retirement of Dr. Daniel Hill in March 1989, the Committee in its Seventeenth Report, expressed its gratitude to Dr. Hill for his work over five years as Ontario Ombudsman. The Committee would now like to convey its thanks and appreciation to Ms Elinor Meslin, the Executive Director of the Office of the Ombudsman, who following Dr. Hill's retirement and for a term of six months ending September 21, 1989, stepped into the role of Temporary Ombudsman. In accepting this position, Ms Meslin became the first woman to be Ombudsman in a Canadian province. The Committee commends Ms Meslin for her competence, enthusiasm and empathy.

The Committee recognized that from the end of Ms Meslin's term until the announcement of the appointment of Roberta Jamieson as the new Ombudsman of Ontario on October 13, 1989, the Office of the Ombudsman faced a difficult and uncertain time. Certain functions of the Office could not be performed. The Committee was sympathetic to this difficulty and appreciated the efforts taken by Ms Meslin and others to minimize the disruption in Ombudsman services provided to the public of Ontario.

The Committee looks forward to meeting Ms Jamieson and working with her in the future. In the interim, the Committee urges the government to give the new Ombudsman every assistance in making a speedy transition to her new position.

PART III: SIXTEENTH ANNUAL REPORT OF THE OMBUDSMAN

(a) Organization and Operation of the Ombudsman's Office

During the past fiscal year, the Office of the Ombudsman undertook a significant reorganization of its regional services program. A new management structure was put in place with the objective of improving and standardizing the delivery of Ombudsman services throughout Ontario. The Committee fully endorses this effort and looks forward to an assessment of how well the new structure is meeting the needs of Ontarians in all areas.

The Committee is also pleased to note that the Office of the Ombudsman is upgrading its regional services by moving to storefront locations in several centres. While increasing costs in some centres this move has saved costs in others and the Committee agrees with the Ombudsman's assessment that access to Ombudsman's services is improved by operating from a storefront. With the opening of a new office in Sudbury in March 1989, the Ombudsman now has eight regional offices, all staffed on a full-time basis.

(b) Statistical Analysis

During the fiscal year 1988-89, 24,998 people contacted the Ombudsman's Office seeking information and assistance. This figure represents an increase of almost 4,000 over 1987-88.

Most of the increase came in the non-jurisdictional complaint/inquiries category. The total number of jurisdictional complaints was in fact down from the previous year. The Ombudsman explained that to be counted as "jurisdictional", a complaint must be presented in written form. The fact that the number of jurisdictional complaints was down while the total number of matters dealt with was so much higher, was a reflection of a change in the practice of the office in regard to complaints received by telephone. Whereas in previous years an otherwise "jurisdictional" complaint initially received by telephone would have had to be resubmitted in writing before being acted upon, this year many of those complaints were being dealt with without that requirement.

This difference in approach was illustrated very clearly over the past year in the complaint statistics relating to the Ministry of Correctional Services. Nearly 1,000 fewer jurisdictional complaints were handled in 1988-89 than in 1987-88, but this was more than made up for in the numbers of complainants assisted informally, and thus non-jurisdictionally, with their complaints. The Ombudsman points to the recent installation of telephones in provincial correctional facilities to which inmates have unescorted access as responsible for producing this shift. A benefit of the change in dealing with inmate complaints noted by the Committee is an improvement in the timeliness with which complaints are dealt with and thus a decline in the number of complaints withdrawn or abandoned for reasons such as an inmate leaving a facility before an investigation is completed.

Finally, the Committee would like to commend the Ombudsman for resolving all but one recommendation denied case prior to the Committee's hearings. The Committee recognizes that this record of resolving disputes speaks well for the effectiveness of the Ombudsman process in Ontario.

(c) Amendments to the Ombudsman Act and Regulations

Last year the Committee was given written assurance by the Attorney General that Ombudsman Act amendments would be tabled in the next session of the Legislature. Regrettably this did not happen. The Committee stresses that this matter is urgent and deserving of priority. In almost every report over the past five years the Committee has recommended that a bill be introduced to amend the Ombudsman Act. The Committee can think of no reason to justify the government's inaction and urges that this situation be corrected without delay.

This year for the first time the Ombudsman has proposed an amendment to section 4(ii) of Regulation 697 under the Ombudsman Act. This regulation was first passed by the Select Committee on the Ombudsman in 1979 under its statutory authority to enact general rules for the guidance of the Ombudsman in the exercise of his or her duties under the Ombudsman Act.

The section currently states:

4(ii) A member of the Ombudsman's staff carrying out Ombudsman functions under the Ombudsman Act, shall not express to anyone, other than to the

Ombudsman or to his authorized delegate, his or her opinion, recommendation or other similar comments respecting the decision, recommendation, act or omission purported to have been committed by or on behalf of the governmental organization in question or respecting anything else arising out of the investigation of the complaint by the Ombudsman and his staff.

The Ombudsman (Ms. Meslin) and her investigative staff wanted to see this section changed to allow an investigator to give a meaningful assessment of the merits of a complaint to a complainant and to communicate the nature of the recommendation that the investigator would be making to the Ombudsman. The Ombudsman is of the view that the current rules are too formal and create unnecessary strain between the investigator and complainant. She points out that as the investigator is the complainant's main point of contact with the Ombudsman's Office, the complainant is understandably concerned to know what the investigator thinks of the case. Section 4(ii) does not allow the investigator to provide this assessment.

The Committee has some sympathy with this situation. It believes, however, that more would be lost than gained by making the change suggested by the Ombudsman. The Ombudsman Act sets out a system for investigating complaints and making recommendations for which the Ombudsman, and only the Ombudsman, is accountable. The Committee believes that this system would be compromised if complainants were provided with opinions and recommendations from investigators which could be in potential conflict with the those of the Ombudsman. The Committee does believe, however, that the section as it was written, requires amendment to more accurately reflect the intention of its drafters. The Committee therefore recommends:

1. That section 4(ii) of Regulation 697 under the Ombudsman Act be amended to state:

No member of the Ombudsman's staff shall express to anyone other than the Ombudsman, or delegate of the Ombudsman, any opinion, recommendation, or other similar comment respecting the matter being investigated or respecting anything else arising out of the investigation. (Recommendation 1)

(d) Court Actions

Two separate court actions were commenced by the Ombudsman (Dr. Hill) during the past year. Both were responses to governmental organizations challenging the statutory authority of the Ombudsman to investigate their activities. The first case involves the Board of Radiological Technicians, an independent regulatory body created by statute, whose role is to supervise the self-regulation of radiological technicians in the Province of Ontario. The Ombudsman takes the position that this board is no different from the Health Disciplines Board, which the Divisional Court in 1979 determined was within the Ombudsman's investigative jurisdiction. A hearing of the case in Divisional Court is expected in the near future.

The second case is one which the Committee will be watching with a greater amount of concern. The Attorney General, on behalf of the Ministry of Financial Institutions, the Ministry of Health and the Ministry of Agriculture and Food, has challenged the Ombudsman's jurisdiction to investigate the actions of civil servants carrying out their duties under the authority of an Order-in-Council. The Attorney General asserts that because Orders-in-Council are the product of cabinet deliberations the Ombudsman has no jurisdiction to deal with them in any way. This potentially could affect some 50 percent of the cases routinely investigated by the Ombudsman's office, as it would include matters arising out of regulations. The Ombudsman, by contrast, distinguishes between an investigation going to the merits or making of a regulation and an investigation of the manner in which civil servants and others interpret or apply a regulation. In the former case the Ombudsman would not investigate, in the latter case s/he would. This case will also be heard in Divisional Court in the near future.

(e) Matters Outstanding from Previous Ombudsman Reports

(i) Ministry of Agriculture and Food

On February 2, 1989, the Ombudsman tabled a Special Report regarding the case of Farm Q. The case is a complex one and necessitated several days of hearings in both March and June. A number of issues were left outstanding at that time and negotiations between the Ombudsman and the Ministry of Agriculture and Food failed to resolve them.

At the Ombudsman's request the Committee allocated time to conduct further hearings during its scheduled sitting in late September. The day before these hearings, the Committee received a letter from Carl F. Dombek of the Ministry of Agriculture and Food requesting more time to complete a reply to the most recent report of the Ombudsman received by the Ministry on September 14, 1989. The Committee concurred in this request and agreed to a delay of up to six to eight weeks. The Committee believes that under the circumstances the delay granted is more than adequate. The Committee intends to proceed with the case as soon as the Ministry of Agriculture and Food is ready and in any event by mid-November, 1989.

(f) Recommendations Denied

As noted under the Committee's review of the Ombudsman's statistics, at the end of the fiscal year there were six recommendation denied cases outstanding. All but one case was resolved prior to the Ombudsman submitting the Annual Report. Prior to the Committee's hearings, this case too was partially resolved. The Committee would again like to commend the Ombudsman and the governmental organizations involved for coming to an independent resolution of these matters.

(i) Worker's Compensation Appeals Tribunal

This is the first case heard by the Committee involving the Worker's Compensation Appeals Tribunal (WCAT). It also has the potential to be the last.

The case initially concerned a decision of the WCAT dated May 29, 1986 awarding a clothing alteration allowance to a worker. The worker, Mr. T, had suffered a compensable shoulder dislocation in 1972. In 1982, after a number of operations he was assessed for a permanent disability award of 85%. The operations left him with a frail left shoulder, a left arm 4 to 5 inches shorter than the right and a significant wasting of his left shoulder and arm muscles.

In 1984 he wrote to the WCB requesting additional funds for clothing based on the fact that his left shoulder and arm configuration required him to have his upper body clothing tailor-made. The WCB refused. This refusal was eventually overturned in the WCAT's 1986 decision. The basis for Mr. T's complaint to the Ombudsman was that the WCAT only dated the award from November 1985. Mr. T asserted that he incurred additional clothing expenses well before that time.

Following an investigation of this complaint the Ombudsman (Ms. Meslin) reached the conclusion that the WCAT's decision to date the award from November 1985 was unreasonable and that a more reasonable date would be the date of the permanent disability assessment in 1982. The Ombudsman's report to the WCAT, sent on December 6, 1988, therefore recommended the WCAT appoint a reconsideration panel to review the decision of May 29, 1986 in light of the information contained in the Ombudsman's report.

In accordance with the terms of its own act, the WCAT appointed a panel to determine whether it was "advisable" to reconsider the earlier decision. This hearing was held on April 13, 1989. At the end of the hearing the panel concluded that there were not sufficient grounds for conducting a reconsideration.

In reaching this conclusion the panel also addressed the question of how it should respond to a recommendation from the Ombudsman that it appoint a reconsideration panel. The panel concluded that it should not treat an Ombudsman request differently from any other request. This conclusion was not shared by the Ombudsman and it is this conclusion rather than the decision of the panel based on the merits of the case that the Committee was asked to deal with.

Section 76 of the Workers' Compensation Act, R.S.O. 1980 c. 539, as amended, states:

The Board [or Tribunal, ref. s. 86m] may at any time it considers it advisable to do so, reconsider any decision, order, declaration or ruling made by it and vary, amend or revoke such decision, order, declaration or ruling.

In his submissions and in materials presented to the Committee, Mr. Ron Ellis, Chair of the Workers' Compensation Appeals Tribunal, outlined the procedure developed by the Tribunal for determining when it "considers it advisable" to reconsider a decision. The normal procedure, outlined in Tribunal Practice Direction No. 8, involves the appointment of a panel, usually the panel which originally made the decision, to review a written request for reconsideration submitted by one of the parties. If, on the basis of written submissions by that party, the panel is persuaded that it is advisable to reconsider the decision, it will ask for submissions from the other party or parties affected as to why it should not reconsider. If after receiving these submissions, the

panel is still of the view that there should be a reconsideration, it will then hold a re-hearing and make a new decision. At the re-hearing the panel has the discretion to reopen all issues for reconsideration or to restrict the reconsideration to part of the decision.

In reviewing the factors which determine when a panel "considers it advisable" to reconsider a decision, Mr. Ellis stressed the importance of finality in the WCAT's decisions. The WCAT is a quasi-judicial tribunal and the final level of appeal for workers' compensation matters. Thus while the Act appears to allow considerable discretion to the WCAT in regard to when it may reconsider a decision, the standard of review applied to reconsideration decisions is in fact very high and, according to Mr. Ellis, it is only in "unusual circumstances" that a panel will find it advisable to reconsider. Such "unusual circumstances" would include significant new evidence, or a defect in either the administrative process or content of a decision which, if remedied, would probably produce a different result. A party's belief that a decision is wrong or unreasonable is not a sufficient basis to warrant reconsidering a case.

In her approach to the issue, the Ombudsman (Ms. Meslin) asserted that a different procedure should be followed when the WCAT receives an Ombudsman report recommending reconsideration of a decision. The Ombudsman pointed to several factors which make her report different from a request by a party to the original decision. These include: her impartiality as between all the parties concerned; her independent investigation of the circumstances of the decision; and her request for submissions from everyone concerned with the decision prior to making a recommendation for a reconsideration. In sum she said that the Ombudsman process does all the things and more that a panel appointed by the WCAT is required to do and her recommendation should be sufficient reason in and of itself for the WCAT to "consider it advisable" to reconsider a decision.

The Ombudsman stressed that she is not in her recommendations telling the WCAT what its decision on the merits of a case should be. She believes it would be inappropriate and wrong to seek to fetter the discretion of an independent quasi-judicial tribunal in that way. She does not think, however, that it would unacceptably fetter the discretion of the WCAT for it to accept as one of the grounds for finding it "advisable to reconsider" a decision, that it has received a reconsideration recommendation from the Ombudsman.

In reply to this argument, the Chair of the WCAT said that accepting an Ombudsman recommendation as sufficient grounds in and of itself to warrant reconsideration of a decision would be an improper delegation of the WCAT's statutory responsibility. He asserted that both the Workers' Compensation Act and related legal precedents require that the decision to reconsider be made by the WCAT and not by any other body. The Chair did concede, however, that an Ombudsman recommendation is not in fact treated in quite the ordinary way by the WCAT. He said that an Ombudsman's report would always prompt a panel to be appointed to inquire into whether it was advisable to reconsider and would always be regarded by that panel as demonstrating sufficient cause to require the panel to seek submissions from the other affected party as to why it should not reconsider the decision.

Regrettably the Committee was unable to conclude its hearing of this matter prior to adjourning. The Committee is of the view, however, that in their submissions to the Committee, the positions taken by the Ombudsman and the WCAT were not as far apart as they had first appeared. The Committee is therefore hopeful that an independent resolution of this dispute can be reached. The Committee would encourage the Ombudsman and the WCAT to work together towards a mutually acceptable solution. The Committee will continue with its hearing of the case at the earliest opportunity should the parties not reach a settlement.

PART IV: SPECIAL REPORT OF THE OMBUDSMAN

(a) Recommendations Denied by Governmental Organizations

(i) Ministry of Health - Ms W

On March 17, 1987, Ms W gave birth to a son at 25 weeks gestation. The baby remained in hospital for approximately three months during which time he was fed with bottles of breast milk provided by his mother. To produce an adequate supply of milk she found it necessary to rent an electric breast pump at a cost of \$455.82. Ms W corresponded with the Ontario Hospital Insurance Program (OHIP) concerning reimbursement of this expense and was told that the cost of renting an electric breast pump was not an insured benefit. In July, 1987, Ms W complained to the Ombudsman about this refusal to provide coverage.

Following an investigation of this matter the Ombudsman (Dr. Hill) came to four conclusions:

1. The decision by the Ministry of Health to refuse to cover the cost of renting electric breast pumps for feeding premature infants in hospitals with their mother's milk was unreasonable.
2. The Ministry's decision to exclude breast pumps from coverage in Section 53(9) of Regulation 452 under the Health Insurance Act was unreasonable.
3. The Ministry's omission to provide an adequate process through which to consider electric breast pumps under the Assistive Devices Program was unreasonable.
4. The act by which the Ministry's decisions with respect to priorities are made in the Assistive Devices Program is in accordance with a practice which is unreasonable.

During the course of the Ombudsman's investigation, the Ombudsman was referred by Allan Dyer, then Deputy Minister of Health to the Assistive Devices Program as a place where consideration had once been given to funding the cost of electric breast pumps. An investigation of this program revealed that while the Minister's Advisory Council on Assistive Devices had once placed electric breast pumps on a list of devices to be considered for future funding, it had given them low priority and no serious attention. In the opinion of Dr. A, the current Chair of the Advisory Committee, it is not likely that breast pumps would receive serious consideration by the Committee as they do not fit in very well with the mandate of the Assistive Devices Program.

In her submissions to the Committee, the Ombudsman (Ms. Meslin) stated that after examining the program, she too was of the view that the mandate of the Assistive Devices Program did not readily encompass the provision of breast pumps. Her attention was drawn to the program, however, by two things; the Deputy Minister's letter and the fact that the Advisory Council by listing breast pumps (even with a low priority) seemed to assume that they fit within its existing funding categories. During her investigation, it also became apparent to the Ombudsman that apart from recommendations of the Advisory Council, there were no guidelines or set criteria employed by the Assistive Devices Branch of the Ministry to assist it in determining what new devices to add to the program. Coincidentally to the investigation, the Ombudsman learned that the Ministry had plans to conduct a review of the program with the objective of addressing some of the same concerns highlighted by the Ombudsman through her investigation.

The Ombudsman investigation also examined two other ways which the Ministry could consider funding the provision of breast pumps. First was by listing breast pumps as an exemption to the category of things defined as "special appliances." Second was by treating them as meals provided to a hospital patient.

The Ministry defines "special appliances" as devices that are not implanted in the body, such as eyeglasses and canes. As a matter of policy, the Ministry does not fund the cost of such devices. The Ombudsman observed, however, that there are a number of exemptions to that policy already existing and identified among them renal dialysis and hyperalimentation equipment. She disputed the Ministry's argument that there was a distinction to be drawn between the circumstances of premature infants and persons whose life-threatening diseases made necessary the continuous use of dialysis or hyperalimentation equipment. She asserted that as many premature infants arrive in the world in highly life-threatening circumstances, the special properties of mother's milk in providing a defence against infection make the ongoing use of a breast pump an important factor in these infants' struggle for survival.

Finally the Ombudsman addressed the question of whether the Ministry could consider including the cost of renting a breast pump as part of the cost of providing meals to a hospital patient. She observed that the regulation under which meals are included in insurable hospital services does not distinguish between the different types of meals served in a hospital, whether standard fare, special diet, intravenous tubes, feeding

tubes, or feeding pumps, etc. She concluded that in cases such as Baby W, where his physician determined that his mother's milk should be the primary form of nourishment and specifically advised his mother to provide her own milk, that the cost of providing that milk - namely renting a breast pump - should be paid for by OHIP as a cost associated with providing a meal to a patient. She also observed that present hospital policy which makes formula substitutes for breast milk available at no charge to the patient actually serves to undermine the physicians determination of what is best for a patient.

Following upon her investigation and conclusions the Ombudsman recommended:

1. The Ministry of Health should further consider including, as an insured service, the cost of electric breast pumps specifically for feeding premature infants, by amending its criteria for defining "special appliances" in Section 53(1) 9 of Regulation 452 under the Health Insurance Act, such that breast pumps are excluded from this category, and included under Section 39 of Regulation 452, specifically for premature babies when prescribed by a physician or the medical staff of a hospital.
2. The Ministry of Health should also develop clear criteria for managing the Assistive Devices Programme.

In submissions to the Committee, the Ministry took issue with only one aspect of the Ombudsman's recommendations, specifically the first recommendation's suggestion that it is the responsibility of the Ministry rather than the government to amend regulations. Dr. Barkin, Deputy Minister of Health explained that the role of the Ministry is merely to identify policy options for the government. It is the government which then determines whether or not legislation is required and if so what it should encompass. He was otherwise not disputing the Ombudsman's recommendations and confirmed that indeed the second recommendation was already being addressed by the Ministry's review of the Assistive Devices Programme.

The matter of greater concern to the Ministry and why they felt it necessary to appear before the Standing Committee was the Ombudsman's conclusions. In a letter to the Ombudsman of September 14, 1989, Dr. Barkin outlined the Ministry's position concerning the conclusions in the following terms:

At a September 11, 1989 joint meeting the Deputy Minister took exception to the term "unreasonable" used to describe Ministry decisions in Ombudsman conclusions 1, 2, and 4. Only the Government is in a

position to determine if and when additional discretionary health services will be included for universal coverage (beyond the requirements of the Canada Health Act, 1984). This applies also to any expansion of coverage for an existing program such as Assistive Devices or the Health Insurance Act. The use of the term "unreasonable" is itself unreasonable in that:

- It is the responsibility of the government to determine what coverage is provided.
- The Cabinet, and not the Ministry of Health, makes major allocative decisions.
- An Ombudsman conclusion that lack of coverage is "unreasonable" becomes an instrument for advocacy groups and can raise public expectations where funding is not possible.

The Committee has some sympathy for some of the Ministry's concerns. It too, on occasion has felt that the Ombudsman's conclusions have unduly belaboured the use of the term "unreasonable." The Committee would point out to the Ministry, however, that the language used by the Ombudsman in formulating conclusions is prescribed by the Ombudsman Act. The repetition of the term "unreasonable," though having a rather blunt effect, is nevertheless statutorily correct. To avoid such obscuring of the main issues in the future, however, the Committee would encourage the Ombudsman to present his or her conclusions in less inflammatory style.

Thus while the Committee has reservations about the way that the Ombudsman's conclusions are written, it fully supports her recommendations. It would further point out to the Ministry that the Ombudsman's first recommendation asks only that the Ministry consider funding the cost of breast pumps by a variety of suggested means. The development of policy options for consideration by the government, which task was accepted by Dr. Barkin as within the Ministry's mandate, would in the Committee's view, constitute compliance with this recommendation. The Committee therefore recommends that:

2. The Ministry of Health should further consider including, as an insured service, the cost of electric breast pumps specifically for feeding premature infants, by amending its criteria for defining "special appliances" in Section 53(1) 9 of Regulation 452 under the Health Insurance Act, such that breast pumps are excluded from this category, and included under Section 39 of Regulation 452, specifically for premature babies when prescribed by a physician or the medical staff of a hospital.

The Ministry of Health should also develop clear criteria for managing the Assistive Devices Program.

The Committee also determined that it should add a further recommendation concerning the manner in which the Ministry addresses funding decisions and recommendations. During the course of the hearings the Deputy Minister agreed that there are perhaps things which the Ministry should be funding, but that for one reason or another - program mandate, definitions, etc. - fall through the cracks. The Committee believes that better coordination and planning of funding policies would reduce the chance of this occurring in the future. The Committee therefore recommends that:

The Ministry re-evaluate the adequacy of the process through which it determines what programs, devices, and benefits are funded by the Ministry of Health. (Recommendation 2)

The Committee looks forward to hearing from the Ministry of Health concerning its implementation of these recommendations.

PART V: SEVENTEENTH REPORT OF THE STANDING COMMITTEE

(a) Debate by Legislature

The Seventeenth Report of the Standing Committee on the Ombudsman was tabled in the Legislature on January 24, 1989. It contains discussion and responses to the Fifteenth Annual Report of the Ombudsman 1987-88 and several Ombudsman's special reports in which a total of five "recommendation denied" cases were reported. There has been no debate of the Committee's Report.

(b) Responses of Governmental Organizations to Recommendations Contained in the Report

(i) - (iii) Ministry of Health
Mr. K, Mr. and Mrs. L., Ms M.

In its Seventeenth Report, the Committee recommended that:

The Ministry of Health amend Ontario Regulation 596/85 in order to remove all age restrictions pertaining to the provision of companion travel grants under the Northern Health Travel Grant Program. (Recommendation 2)

The Committee is advised by the Ombudsman that the Travel Grant Program is presently under review by the Ministry. This review will take into account the Ombudsman's and Committee's recommendation.

(iv) Ministry of Health - Mr. and Mrs. J

In its Seventeenth Report, the Committee recommended:

That the Ministry of Health arrange to provide donor sperm to Mr. and Mrs. J. at no cost as soon as an acceptable test has been developed to ensure that donor sperm is free from the AIDS virus.
(Recommendation 3)

Shortly after the Committee hearings, the Ombudsman advised the Committee that the Ministry of Health had accepted the Committee's recommendation and had begun the process of approving a policy through which the province would cover the cost of donor sperm.

At the Committee's hearings this year, Dr. Barkin, Deputy Minister of Health, advised the Committee that while the Ministry's plans have not changed, they have encountered unanticipated delays of both a medical and legal nature. Dr. Barkin listed among the concerns causing the delay the fact that there is not yet a fully satisfactory AIDS (HIV) screening test.

The Committee is appreciative of the Ministry's explanation for the delay. It also recognizes that prior to funding a program and thereby giving it a "stamp of approval," the government must be sure that all major relevant medical and legal questions are examined. The Committee nevertheless encourages the Ministry of Health to press ahead with developing their program. The Committee looks forward to the successful conclusion of this matter in the near future.

On a related matter, the Committee would like to commend the Ministry of Health for its cooperation in establishing a joint committee composed of senior representatives of both the Ombudsman's Office and the Ministry of Health whose responsibility is to work on the resolution of complaints brought to the Ministry by the Ombudsman. The Committee's past experience with joint committees involving other ministries or governmental organization has been a positive one. Many issues which otherwise would have required a public appearance before the Standing Committee have been able to be resolved by the development of the direct lines of communication provided by these committees.

(v) Ministry of Education - Mrs. H

In its Seventeenth Report the Committee made three recommendations concerning this matter:

That the Ministry of Education cause the Teachers' Superannuation Commission to pay Mrs. H survivor benefits as of August 8, 1985, and that the Ministry of Education, within three months of this motion, on or about November 22, 1988, report to this Committee on the advisability of extending this benefit as a matter of right to spouses of Teachers' Superannuation Fund members adversely affected.
(Recommendation 4)

That the Committee direct the working group (as set up by the Minister of Education) to deal with the issue of Mrs. H's pension and the general issue of pensions, as soon as possible.
(Recommendation 5)

That the Minister of Education in conjunction with any other governmental organization he deems necessary, issue an ex gratia payment to Mrs. H as soon as possible, effective from the first day of the month following the date of her inquiry for same, until the amended provision is in force. Such a payment can be made through the annual budgetary process, so that no question will arise as to the authority of the Ministry to make the payments; and

That the Minister of Education in conjunction with any other governmental organization he deems necessary, make spousal payments to any other surviving spouses who have been denied a full dependent or survivor allowance by the Teachers' Superannuation Act or the Teachers' Superannuation Act, 1983, payable from the first day of the month following the date of their request for a benefit as a result of this recommendation.
(Recommendation 6)

These recommendations remain outstanding. The Committee will be seeking an explanation from the Ministry as to why their implementation has been delayed.

(c) Expanded Jurisdiction of the Ombudsman

In its Seventeenth Report the Committee reported that it had begun consideration of the Ombudsman's 1986 "Position Paper on Expanding the Jurisdiction of the Ombudsman." Public hearings on the issue were held during the fall of 1988. In its September 1989 sittings, the Committee completed its consideration of the Ombudsman's proposal. The Committee is preparing a special report to address this matter and will table it in the Legislature shortly.

PART VI: COMMUNICATIONS RECEIVED FROM THE PUBLIC

Since the Committee's last report, the Subcommittee on Communications Received from the Public has met four times. It has received correspondence from sixteen members of the public. Six of the letters requested information only. The remaining ten raised a variety of concerns about the Ombudsman's handling of complaints. The subcommittee has reviewed nine of these matters plus one left over from the previous year. The tenth letter was only recently received and is still to be dealt with by the subcommittee.

In all but one of the situations which the subcommittee has dealt with, it reported to the full Committee that it was satisfied that the Ombudsman had conducted the investigation fairly and thoroughly and that it could find no reason to disturb the Ombudsman's conclusions. In the one case where the subcommittee was not satisfied, the subcommittee was of the view that the Ombudsman's investigation was inadequate in two respects: first that the Ombudsman failed to seek alternative estimates of the value of the timber on Mr. W's land; and second that the Ombudsman did not properly consider the issue of interest. The Committee adopted the following subcommittee recommendation:

3. **That the chair inform the Ombudsman that it should reinvestigate the case of Mr. W, specifically the value of the timber on his property and the interest owed. (Recommendation 3)**

The subcommittee will remain seized of this matter until the Ombudsman's reinvestigation is complete and will report its conclusions to the full Committee at that time.

PART VII: SUMMARY OF RECOMMENDATIONS

1. That section 4(ii) of Regulation 697 under the Ombudsman Act be amended to state:

No member of the Ombudsman's staff shall express to anyone other than the Ombudsman, or delegate of the Ombudsman, any opinion, recommendation, or other similar comment respecting the matter being investigated or respecting anything else arising out of the investigation. (Page 4)

2. The Ministry of Health should further consider including, as an insured service, the cost of electric breast pumps specifically for feeding premature infants, by amending its criteria for defining "special appliances" in Section 53(1) 9 of Regulation 452 under the Health Insurance Act, such that breast pumps are excluded from this category, and included under Section 39 of Regulation 452, specifically for premature babies when prescribed by a physician or the medical staff of a hospital.

The Ministry of Health should also develop clear criteria for managing the Assistive Devices Program.

The Ministry re-evaluate the adequacy of the process through which it determines what programs, devices and benefits are funded by the Ministry of Health. (Pages 13 & 14)

3. That the chair inform the Ombudsman that it should reinvestigate the case of Mr. W, specifically the value of the timber on his property and the interest owed. (Page 18)

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